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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSHUA DUBOSE,

Defendant and Appellant.

B275409

(Los Angeles County
Super. Ct. No. NA102117)

APPEAL from an order of the Superior Court of Los Angeles County, Richard R. Romero, Judge. Reversed and remanded.

Andrea S. Bitar, 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, Senior Assistant Attorney General, Victoria B. Wilson, Supervising Deputy Attorney General, and Lindsay Boyd, Deputy Attorney General, for Plaintiff and Respondent.

INTRODUCTION

Defendant and appellant Joshua Dubose appeals from the trial court's denial of defendant's request for an order finding that defendant satisfied certain conditions of probation and should be released from custody. We reverse and remand.

BACKGROUND

On July 15, 2015, defendant pleaded no contest to one count of second degree burglary of a vehicle in violation of Penal Code, section 459,¹ and admitted to having sustained two prior convictions pursuant to section 667.5, subdivision (b). The trial court thereafter suspended imposition of sentence and placed defendant on formal probation for three years with the conditions, among others, that he serve 180 days in county jail and perform 30 days of community labor with the California Department of Transportation (Cal-Trans).

Subsequently, to satisfy the condition that he serve 180 days in jail, defendant was placed in a work release program.

On April 6, 2016, defendant was brought before the trial court for failing to report to the probation department and meet various court-imposed obligations. Defendant waived his right to a formal hearing and admitted he violated the terms and conditions of his probation after the trial court told defendant that: "I will impose 90 days [county jail] and delete the requirement of the Cal-Trans and take this as satisfaction of the work release requirement." In light of defendant's waiver and admission, the trial court found defendant in violation of probation and thereupon revoked and reinstated probation under all the original terms and conditions with the following stated

¹ All further statutory citations are to the Penal Code.

modifications: “The requirement of the 30 days of Cal-Trans is deleted. [¶] The court accepts the defendant’s service of his jail sentence as satisfaction of any work release that’s owing. So that’s deleted.”

About two months later, on June 7, 2016, defendant’s counsel came before the trial court and indicated that defendant was in custody for failure to report to the Los Angeles County Sheriff’s Department’s work release program. Defendant’s counsel argued that the trial court had previously “deleted the remainder of the work release sentence” when it reinstated and modified probation on April 6, 2016, but explained that defendant was nonetheless “rearrested” by the Sheriff’s Department and “is being ordered to do that work release program that we [sic] had discharged him from.” Stating that defendant had already completed the 90-day jail sentence and had been released prior to being brought back into custody, defense counsel accordingly asked the trial court “to order that [defendant] be released from custody on this case and to indicate that he satisfied his conditions.”

In response, the trial court opined: “Off the record, I did indicate that when this disposition [on April 6, 2016] was done, in the back of my mind it occurred to me do I have power to do this? It was a doubt. I wasn’t convinced one way or the other. It was a question. I should have brought it up to you. It was sort of an afterthought. I apologize for that. [¶] I don’t believe I have jurisdiction on the Sheriff’s early release. I don’t think I can undo what they have done. There is a court that I believe supervises violations of that program. . . .” The prosecutor added: “I agree with the court. I don’t think we [sic] can do it.”

The trial court then ruled: “The request is denied. There may be other avenues of relief. I am sorry” Defendant timely appealed. The trial court granted defendant’s release from custody on his own recognizance pending appeal.

DISCUSSION

For the reasons that follow, we reverse the trial court’s order denying relief and remand the matter so that the trial court may consider defendant’s request for relief with consideration of the full range of available legal options.

We begin our discussion with the April 6, 2016, hearing. We agree with both parties that the trial court possessed broad discretion to modify the terms and conditions of defendant’s probation when it revoked and reinstated probation at that hearing. Section 1203.2 permits a trial court to modify, revoke, or terminate probation upon a finding of a probation violation. (§ 1203.2, subd. (a).) This includes broad discretion to add new, delete old, and modify existing conditions of probation. (See *People v. Bolian* (2014) 231 Cal.App.4th 1415, 1420-1421 (*Bolian*).)

We disagree, however, with defendant that the trial court’s discretion under § 1203.2 encompassed the authority to “delete” defendant’s work release obligation and/or deem the 90 days county jail it imposed as “satisfaction of the work release requirement” when it modified probation on April 6, 2016. Section 4024.2, subdivision (a) provides that “the board of supervisors of any county may authorize the sheriff or other official in charge of county correctional facilities to offer a voluntary program under which any person committed to the facility may participate in a work release program . . . , in which

one day of participation will be in lieu of one day of confinement.” (§ 4024.2, subd. (a).) Subdivision (d) of section 4024.2 further provides that “[a] person shall be eligible for work release under this section only if the sheriff or other official in charge concludes that the person is a fit subject therefor.” (§ 4024.2, subd. (d).) By section 4024.2’s explicit terms, oversight and administration of a work release program to satisfy an imposed term of confinement under that section falls under the authority of the county board of supervisors and the county sheriff or appropriate designee—not the trial court. As our Supreme Court has explained, “[a] judge has the power to commit a person to a correctional facility, but then the administrative official in charge of the facility has the discretionary power to offer work release if the person is deemed eligible under the rules of the program.” (*Ryan v. Commission on Judicial Performance* (1988) 45 Cal.3d 518, 539; see also *United States v. Benz* (9th Cir. 2006) 472 F.3d 657, 659.)

We thus conclude that, when the trial court modified the terms and conditions of defendant’s probation on April 6, 2016, it did not have authority to order directly that defendant’s work release program obligation be deleted or that the obligation be deemed satisfied due to the newly imposed condition of 90 days in jail. We note, however, that the trial court indirectly could have effectively eliminated any remaining work release obligations by simply deleting the original 180-day jail term upon which defendant’s work release program was predicated. Service of 180 days in jail was a condition of probation the trial court was entitled to modify or eliminate altogether when it found defendant in violation of probation. (*Bolian, supra*, 231 Cal.App.4th at p. 1420 [“Thus, upon finding a violation of probation and revoking probation, the court . . . may reinstate

probation with modified terms.”].) That is, if there were no 180-day jail term to serve, then there would be no need for participation in a section 4024.2 work release program to satisfy it.

Because the trial court did not have direct authority over defendant’s work release program, that obligation remained, notwithstanding the trial court’s expressed intent to eliminate the need for defendant to complete the work release program. Indeed, absent any contrary indication by the trial court (and our review of the record reveals none), the 180-day jail term still remained as one of the original terms and conditions the trial court re-imposed on April 6, 2016. But no party appealed from the trial court’s April 6, 2016, order modifying the terms of defendant’s probation, and we are thus without jurisdiction here to address or correct an order from which no one timely appealed.

This brings us to June 7, 2016, when defense counsel came before the trial court without notice and, without pointing to any legal authority or reference to any procedural mechanism to do so, asked the trial court to release defendant from custody and relieve him from the work release program obligation. We agree with the trial court’s statement on June 7, 2016, that it had no authority over the sheriff’s work release program, and, on this basis, could affirm the trial court’s denial of defendant’s stated request for relief.

Under the circumstances, however, we find it appropriate to reverse the trial court’s denial of relief and remand for further proceedings. Here, at the April 6, 2016, the trial court indicated an intent to relieve defendant of his work release obligation. At the June 7, 2016, hearing, the trial court might have properly effectuated that intention by treating defense counsel’s vague

request for relief as a motion to modify probation and delete the underlying 180-day jail term imposed as an original condition of defendant's probation. (See § 1203.2, subd. (b)(1).) But that option was never raised or discussed, and, instead, the trial court indicated its belief that it was without power to grant any effective relief. "[W]hen the record indicates the court misunderstood or was unaware of the scope of its discretionary powers, we should remand to allow the court to properly exercise its discretion. [Citations.]" (*Bolian, supra*, 231 Cal.App.4th at p. 1421.)

On remand, the trial court is free to exercise its broad discretion over the terms and conditions of defendant's probation by treating defendant's request for relief as a motion to modify the terms and conditions of probation and deciding whether to, among other things, delete the original condition to serve a 180-day jail term, leave that condition in place, determine whether defendant has since satisfied that term (including calculation of any custody credits to apply towards it), and/or otherwise modify related terms and conditions of probation as the ends of justice so require.²

² We take judicial notice that a minute order for December 13, 2016, states the trial court found defendant in violation of probation, revoked and reinstated probation, and added the condition that defendant serve 41 days in county jail. On remand, the trial court is free to consider the circumstances surrounding that revocation along with any other relevant circumstances.

DISPOSITION

We reverse the trial court's order denying relief and remand for further proceedings consistent with this opinion.

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KIN, J.*

We concur:

KRIEGLER, Acting P. J.

BAKER, J.

* Judge of the Superior Court of the County of Los Angeles, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.