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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

PAULA SUE HUGHES,

Defendant and Appellant.

B232003

(Los Angeles County
Super. Ct. No. MA050726)

APPEAL from an order of the Superior Court of Los Angeles County, Charles A. Chung, Judge. Affirmed.

Christopher Love, 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, Blythe J. Leszkay and Gary A. Lieberman, Deputy Attorneys General, for Plaintiff and Respondent.

After pleading no contest to one count of possession of methamphetamine, Paula Sue Hughes was placed on three years of formal probation pursuant to Penal Code section 1210.1 (Proposition 36). At the sentencing hearing Hughes was also found to have violated probation by leaving an earlier hearing before its conclusion. Hughes appeals from the order finding her in violation of probation. No meritorious issues have been identified by Hughes's appointed counsel or by our own independent review of the record following receipt of supplemental briefing on an issue of the trial court's jurisdiction to find a probation violation. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Hughes was charged by felony complaint on October 21, 2010 with possession of morphine (Health & Safe. Code, § 11350, subd. (a)) and possession of methamphetamine (Health & Safe. Code, § 11377, subd. (a)). On February 22, 2011, while represented by appointed counsel, Hughes waived her right to a preliminary hearing and agreed to plead no contest to possession of methamphetamine. As part of the negotiated agreement the remaining count was to be dismissed, and Hughes placed on three years of formal probation pursuant to Proposition 36. At the time she entered her plea, Hughes was advised of her constitutional rights and the nature and consequences of her plea, both orally and in writing. Hughes stated she understood and waived her constitutional rights, acknowledged she understood the consequences of her plea and accepted the terms of the negotiated agreement. The court ordered Hughes to return to court for sentencing.

At the March 8, 2011 sentencing hearing Hughes appeared with the alternate public defender, asked for appointment of new counsel and stated she wanted to withdraw her plea. She left the courtroom before the trial court could address her request. A no-bail bench warrant was issued.

Hughes was arrested on the bench warrant and appeared in court for sentencing on March 23, 2011. The trial court placed Hughes on three years of formal probation pursuant to the terms of the plea agreement. However, the court also indicated Hughes had violated the terms of her Proposition 36 probation by leaving the courtroom

prematurely during the original sentencing hearing. Hughes admitted she was in violation of probation. Defense counsel did not join in the admission, objecting that Hughes was not on probation when she left the courtroom. The court found Hughes in violation of probation and reinstated probation on the same terms and conditions.

DISCUSSION

We appointed counsel to represent Hughes on appeal. After examination of the record counsel filed an opening brief in which no issues were raised. On October 31, 2011 we advised Hughes she had 30 days within which to personally submit any contentions or issue she wished us to consider. No response has been received to date.

After independently examining the record, however, we requested the parties to provide supplemental briefing on whether the trial court lacked jurisdiction to find Hughes had violated the terms of her Proposition 36 probation.

In their supplemental briefs the Attorney General argues and Hughes's counsel concedes that Hughes is estopped from challenging the trial court's order. We agree. In finding Hughes had violated the terms of her probation prior to actually being sentenced and placed on probation, the trial court acted in excess of jurisdiction, but not in the absence of fundamental jurisdiction, that is, "the court's power to hear and determine the cause." (*In re Griffin* (1967) 67 Cal.2d 343, 346.) As a result, the court's finding and order are not void, but merely voidable (*People v. Ramirez* (2008) 159 Cal.App.4th 1412, 1422). Accordingly, any challenge by Hughes to the order finding her in violation of probation is barred by principles of estoppel since she admitted she was in violation of probation to avoid a potentially more severe punishment for violating a court order. (See *Griffin*, at p. 347 [defendant who seeks or consents to act in excess of jurisdiction is estopped to complain that the ensuing act is in excess of jurisdiction]; *People v. Collins* (1996) 45 Cal.App.4th 849, 862-865 [defendant is estopped to assert a lack of jurisdiction when he seeks or consents to the act alleged to be in excess of jurisdiction and participates in the act].)

We have examined the entire record and are satisfied Hughes's attorney has fully complied with the responsibilities of counsel and no arguable issues exist. (*Smith v. Robbins* (2000) 528 U.S. 259, 277-284 [120 S.Ct. 746, 145 L.Ed.2d 756]; *People v. Kelly* (2006) 40 Cal.4th 106; *People v. Wende* (1979) 25 Cal.3d 436, 441.)

DISPOSITION

The order is affirmed.

PERLUSS, P. J.

We concur:

WOODS, J.

JACKSON, J.