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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.

SHEAN WARDELL COLLINS,

Defendant and Appellant.

B256015

(Los Angeles County
Super. Ct. No. YA088109)

APPEAL from a judgment of the Superior Court of Los Angeles County. Eric C. Taylor, Judge. Affirmed.

Richard B. Lennon, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Blythe J. Leszkay and Nathan Guttman, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Shean Wardell Collins (defendant) appeals the three-year state prison sentence imposed following his open plea of guilty to inflicting corporal injury on a cohabitant. Defendant contends the trial court abused its discretion by denying him probation pursuant to Penal Code section 1170.9.¹ We affirm the sentence.

BACKGROUND

Factual background

On August 7, 2013, Veronica Portillo (Portillo) received a telephone call from defendant. Defendant was Portillo's boyfriend at the time and they had lived together for about two years.² Defendant told Portillo he had found pictures of her with another man. Portillo told defendant they could talk about it the next day. When the call ended, Portillo noticed that defendant was outside her home.

Portillo walked outside and asked defendant to leave. Defendant said that he would leave, but instead he walked to the back of the home. Portillo later noticed defendant returning to the front of the home. Portillo started to walk past defendant. As she passed by him, defendant grabbed Portillo's hair with his right hand and punched her three to four times in the face with his closed left fist. Portillo fell to the ground. She later called 911. Los Angeles County Sheriff's deputies responded to Portillo's home and arrested defendant at the scene. Deputy Aaron Rivera interviewed Portillo at the hospital and photographed her injuries, which included swelling in her face and a lost tooth.

In an amended information, the Los Angeles County District Attorney charged defendant in count 1 with infliction of corporal injury on a former cohabitant (§ 273.5, subd. (a)), and in count 2 with assault by means of force likely to produce great bodily injury (§ 245, subd. (a)(4)). The information alleged that defendant personally inflicted great bodily injury during commission of the offenses (§ 12022.7, subd. (a)), and that he had a prior conviction for inflicting corporal injury on a cohabitant for which he was

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

² The record is unclear as to whether defendant and Portillo were living together at the time of the crime.

sentenced to state prison. (§§ 667.5, subd. (b); 1170, subd. (h)(3).) Defendant initially pleaded not guilty and denied all allegations.

Defendant's plea

When defendant's case was set for trial, the parties and the trial court discussed settling the case. The prosecutor explained that she had offered defendant a three-year state prison term and that defendant faced a possible a nine-year sentence. Defense counsel asked whether the trial court would consider a suspended state prison sentence that would allow defendant to attend an in-patient treatment program at the Department of Veteran's Affairs (VA) as a condition of probation if defendant were to enter an open plea. The court asked whether the VA program was in a locked facility, and whether the prosecutor was open to pursuing that option. The discussion ended when defense counsel said she was unsure whether the VA facility was secured, and the prosecutor said she had no information on the VA program.

During jury selection, defense counsel renewed her request that the trial court consider a suspended state prison sentence so that defendant could attend the VA treatment program as a condition of probation. The court again expressed concerns that the VA facility at which the program was offered was not secured, that defendant had been previously convicted of abusing a cohabitant, and that the injuries sustained by the victim in the instant case were substantial. The trial court expressed its willingness, however, to consider all appropriate options if the parties were to reach a plea agreement, or if defendant were to enter an open plea. The court advised defense counsel to provide information showing that defendant's conduct was the result of a mental disorder caused by his active duty service. The trial court declined to state any indicated sentence.

After the jury was impaneled, defendant withdrew his not guilty plea and pled guilty to inflicting corporal injury on a former cohabitant in an open plea to the court. Defendant admitted the great bodily injury allegation as well as the prior conviction and prior prison term. The trial court accepted defendant's plea and found him guilty of violating section 273.5, subdivision (a). The prosecutor dismissed the assault charge under section 245, subdivision (a)(4).

Sentencing hearing

At the sentencing hearing, defense counsel and the trial court discussed at length whether defendant was suitable for probation with the condition that he receive treatment at the VA. The following information about defendant's life was presented to the trial court.

Defendant served in the United States Navy for one year. He joined the Navy in 2000 and was assigned to a ship outside of any battle arena. At the time defendant joined the Navy, he had not received any diagnosis or treatment for any mental health condition. In 2001, he was honorably discharged because of "a not-otherwise-specified-mental-health disorder, depressive disorder."

In 2005, defendant was present in New Orleans during Hurricane Katrina and nearly drowned during the storm. Defense counsel stated that defendant suffered from post traumatic stress disorder (PTSD) as a result of this experience. Defense counsel further stated that the VA determined in September 2012 that defendant had a 50 percent disability for PTSD. Defendant was never treated by the VA.

In December 2006, defendant was convicted of battery against a domestic partner, in violation of section 243, subdivision (e)(1). For that conviction, defendant was granted probation with a condition that he complete 52 weeks of domestic violence counseling. In February 2007, defendant was convicted of violating a protective order, in violation of section 166, subdivision (a)(4). Three months later, defendant was convicted of violating section 273.5, willful infliction of corporal injury on a domestic partner, for which he was sentenced to a two-year prison term. All three convictions involved the same victim, Valerie Reyes. Reyes was seven months pregnant when defendant pushed her through a glass door during the offense that resulted in defendant's 2007 conviction and two-year prison term. When police officers found Reyes, she was bleeding from her head and her hand. Defendant's 2007 conviction and his subsequent state prison term made him ineligible to have the instant case tried in Veteran's Court.

Defendant failed to appear for three scheduled examinations at the VA in 2011 and one in 2012. As a result, the VA declined to reclassify defendant's previously

determined medical condition, “depressive disorder no otherwise specified, claimed as PTSD, depression 50 percent.”

Portillo, the victim in the instant case, spoke at the sentencing hearing and asked the trial court to consider allowing defendant to enroll in a treatment program so that he could parent his two children. Defendant also addressed the court, acknowledging his past mistakes and expressing his desire to become a better person and to be able to parent his children.

At the conclusion of the hearing, the trial court sentenced defendant to a total of three years in state prison, consisting of the low term of two years for inflicting corporal injury on a cohabitant, and a one-year enhancement for the prior prison term under section 667.5, subdivision (b). The court stayed the three-year enhancement under section 12022.7, subdivision (a) for inflicting great bodily injury on the victim. The trial court accorded defendant 286 days of presentence custody credit.

This appeal followed.

DISCUSSION

I. Applicable law and standard of review

Section 1170.9 gives the trial court discretion to order a treatment program as an alternative to imprisonment for military personnel or veterans who allege they committed their offense as a result of PTSD or other specified conditions stemming from service in the United States military. The statute provides in relevant part: “In the case of any person convicted of a criminal offense who could otherwise be sentenced to county jail or state prison and who alleges that he or she committed the offense as a result of . . . post-traumatic stress disorder . . . stemming from service in the United States military, the court shall, prior to sentencing, make a determination as to whether the defendant was, or currently is, a member of the United States military and whether the defendant may be suffering from . . . post-traumatic stress disorder . . . as a result of his or her service [¶] . . . If the court concludes that a defendant convicted of a criminal offense is a person described in subdivision (a), and if the defendant is otherwise eligible for probation . . . [and] the court places the defendant on probation, the court may order the defendant into

a local, state, federal, or private nonprofit treatment program for a period not to exceed that which the defendant would have served in state prison or county jail, provided the defendant agrees to participate in the program and the court determines that an appropriate treatment program exists.” (§ 1170.9, subd. (a) & (b).)

A trial court’s decision to grant or deny probation is reviewed under the abuse of discretion standard. (*People v. Ferguson* (2011) 194 Cal.App.4th 1070, 1091.) Under this standard, “‘a trial court is presumed to have acted to achieve legitimate sentencing objectives in the absence of a clear showing the sentencing decision was irrational or arbitrary. [Citations.]’ [Citation.]” (*Ibid.*)

II. No abuse of discretion

The record discloses no abuse of discretion. The trial court considered defendant’s one year of service in the Navy, his 2001 discharge for an unspecified mental health depressive disorder, and his claim to have developed PTSD as a victim of Hurricane Katrina and as a result of his prior military service. Against these mitigating factors, the trial court weighed defendant’s multiple domestic violence convictions, including a 2007 conviction and resulting two-year prison term for pushing a pregnant victim through a glass door. The court also took into account the severity of the injuries suffered by the victim in the instant case. Finally, the trial court considered defendant’s failure to keep four previously scheduled appointments with the VA in 2011 and 2012, that the proposed treatment program was not at a secured VA facility, and that defendant would be free to walk away from the program. After balancing these competing factors, the trial court exercised its discretion by denying defendant’s request for probation conditioned upon his enrollment in the VA treatment program.

Defendant argues that given the legislative preference expressed in section 1170.9 to accord treatment for mentally ill veterans, the trial court “should have given greater weight to the interests of justice in treating such veterans than it did.” In enacting section 1170.9, the Legislature’s intent “was not to expand probation eligibility, but only ‘to ensure that judges are aware that a criminal defendant is a combat veteran with these conditions at the time of sentencing and to be aware of any treatment programs that exist

and are appropriate for the person at the time of sentencing if a sentence of probation is appropriate.’ [Citation.]” (*People v. Ferguson, supra*, 194 Cal.App.4th at p. 1093, quoting Stats. 2006, ch. 788, § 1(g), italics omitted.) These legislative goals were met here.

In reviewing a trial court’s determination whether to grant or deny probation, it is not the appellate court’s function to substitute its judgment for that of the trial court or to reweigh the pertinent factors. Its function is to determine whether the trial court’s order is arbitrary or capricious or exceeds the bounds of reason. (*People v. Weaver* (2007) 149 Cal.App.4th 1301, 1311.) Under the circumstances presented here, the trial court’s order was not arbitrary, capricious, or unreasonable.

In addition, because defendant admitted the allegation that he willfully inflicted great bodily injury upon the victim in this case, he was ineligible for probation under section 1203, subdivision (e) unless the trial court found that this was an “unusual case[] where the interests of justice would best be served if the person is granted probation.” (§ 1203, subd. (e).) We conclude there was no abuse of discretion in the trial court’s determination that defendant’s circumstances were not so “unusual” as to overcome the statutory limitation on probation.

DISPOSITION

The judgment is affirmed.

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_____, J.
CHAVEZ

We concur:

_____, P. J.
BOREN

_____, J.
ASHMANN-GERST