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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

NICOLLE RENA KENNEDY,

Defendant and Appellant.

B285580

(Los Angeles County
Super. Ct. No. MA065849)

APPEAL from a judgment of the Superior Court of Los Angeles County, Daviann L. Mitchell, Judge. Affirmed.

Lori A. Quick, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

In an April 23, 2015 information, the People charged Nicolle Rena Kennedy with assault with a deadly weapon, to wit, incandescent bulb, (Pen. Code, § 245, subd. (a)(1); count 1), and willfully inflicting corporal injury on a spouse resulting in a traumatic condition (Pen. Code, § 273.5, subd. (a); count 2). On May 14, 2015, Kennedy pleaded nolo contendere to count 2; count 1 was dismissed. On June 4, 2015, the trial court suspended imposition of sentence for five years, sentenced Kennedy to 69 days in county jail, and gave her credit for time served. In addition, the court ordered Kennedy to perform 45 days of community labor and complete a 52-week domestic violence program.

On December 15, 2016, the court revoked Kennedy's probation. On March 13, 2017, Kennedy admitted the probation violation. The court reinstated probation on the same terms and conditions with the additional requirement that Kennedy complete a 180-day live-in, lockdown residential drug treatment program. The court informed Kennedy that she would be sent to prison if she walked away from the program or got "kicked out for some reason that is something [she had] control over." On April 6, 2017, the court ordered Kennedy to serve 180 days in the Alcoholism Center for Women (ACW). The court instructed Kennedy to report to court on the next day the court was in session if she left the program or was discharged for any reason.

On June 30, 2017, Kennedy's attorney brought her to court as ACW had discharged her for failing to comply with the program's rules and regulations. The court revoked Kennedy's probation and she was remanded.

A probation violation hearing occurred on August 22, 2017. One of the ACW counselors who worked regularly with Kennedy—Jozette Combs—testified that ACW had put Kennedy on a “contract” on June 14, 2017 based on reports that she had been disrespectful to staff. Specifically, Kennedy’s repeated conduct proved confrontational, oppositional, defiant, and verbally aggressive. Another ACW counselor, Sarah Burton, testified that Kennedy’s verbal aggression toward her got so bad that Burton preferred not to speak with Kennedy unless another staff member was present. Burton testified that, on another occasion, Kennedy “went ballistic” on a staff member when Kennedy experienced trouble getting a pass to leave the premises for a court hearing. Burton and Combs acknowledged that Kennedy did have periods when she made progress but, according to Combs, Kennedy regressed more than she progressed.

Combs testified that, on June 29, 2017, Kennedy had a minor confrontation with another client during a group activity in the living room. Combs went to the living room, addressed the group, then directed the clients to proceed to another room for daily exercise. As the clients were leaving, Kennedy looked directly at Combs and said, “I’m tired of these mother fuckers.” Combs told Kennedy to pack her belongings, and discharged her that day. At the conclusion of the hearing, the court found Kennedy in violation of her probation for failing to comply with the rules and regulations of the ACW, thereby failing to complete the 180-day residential treatment program that was a condition of her probation. The court revoked Kennedy’s probation, denied her request for reinstatement, and sentenced her to four years in state prison. Kennedy filed a noticed of appeal on October 6, 2017, challenging the probation violation.

We appointed counsel to represent Kennedy on appeal. After examining the record, counsel filed an opening brief raising no issues and asking this court to review the record independently. On January 29, 2018, we advised Kennedy she had 30 days within which to personally submit any contentions or issues she wished us to consider. To date, we have received no response.

Courts have the authority at any time during a term of probation to “revoke, modify, or change [an] order of suspension of imposition or execution of sentence.” (Pen. Code, § 1203.3, subd. (a).) The standard of proof required to establish a probation violation is preponderance of the evidence. (*People v. Rodriguez* (1990) 51 Cal.3d 437, 439.) The “‘minimum requirements of due process’ for parole revocation hearings. [Citation.] . . . are: (1) written notice of claimed violations, (2) disclosure of adverse evidence, (3) the right to confront and cross-examine witnesses, (4) a neutral and detached hearing board, and (5) a written statement by the fact finders as to the evidence relied on and the reasons for revocation.” (*Id.* at p. 441, citing *Morrissey v. Brewer* (1972) 408 U.S. 471, 488–489.)

We have examined the entire record and are satisfied that Kennedy’s counsel has fully complied with her responsibilities and that no arguable issues exist. (*People v. Kelly* (2006) 40 Cal.4th 106, 109–110; *People v. Wende* (1979) 25 Cal.3d 436, 441.)

DISPOSITION

The judgment is affirmed.
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JOHNSON, J.

We concur:

ROTHSCHILD, P. J.

CHANEY, J.