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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

MARCUS DAVID TORO,

Defendant and Appellant.

2d Crim. No. B293801
(Super. Ct. No. 17CR10620)
(Santa Barbara County)

Marcus David Toro appeals from the trial court's order finding that he violated the conditions of his probation, revoking probation and sentencing him to a term of four years in state prison on his conviction of assault with a deadly weapon. (Pen. Code, § 245, subd. (a)(1).)¹ He contends the trial court abused its discretion when it imposed a prison sentence for his first probation violation. We affirm.

¹ All further statutory references are to the Penal Code.

Facts

In October 2017, appellant was living with T.H., his long-time girlfriend and the mother of his then 5-year-old son. After T.H. refused to let appellant use her car, he punched her several times in the face, took her cell phone and car keys, and left their apartment. T.H. followed him to the vehicle, climbed into the back seat and told him not to leave. He got out, pulled T.H. from the vehicle, dragged her some distance, threw her against a wall and punched her several more times. Then he drove away.

Within two days, police located appellant at another residence during an unrelated probation search. There was drug paraphernalia and a small quantity of methamphetamine and marijuana in his backpack. Appellant turned over the keys to T.H.'s vehicle and told officers where it was located.

Appellant remained in custody almost continuously until February 2018 when he pleaded no contest to assault with a deadly weapon. On March 28, 2018, the trial court granted appellant five years probation on the conditions, among others, that he obey all laws, report to probation within 72 hours after his release from custody, not use or possess any illegal drugs, and enroll in and complete a one-year batterer's intervention program.

At the same hearing, appellant was served with a new protective order directing him to have no contact with T.H. and to stay at least 100 yards away from her. He was simultaneously served with a notice that a prior protective order, entered after his October 2017 arrest, was terminated.

Immediately upon his release from custody, appellant returned to the apartment he had shared with T.H. Seven days

later, on April 4, 2018, T.H. tried to call appellant's probation officer because appellant was doing drugs. She told Santa Barbara Police Officer Scott Naganuma that appellant grabbed her right arm and wrestled the cell phone away from her. He also took her car keys and said he was going to leave. Officer Naganuma saw red marks on T.H.'s arm.

Appellant was arrested that day and charged with dissuading a witness by force (§ 136.1, subd. (c)), domestic battery (§ 273.5, subd. (a)), and violating a protective order. (§ 166, subd. (c)(1).) After a consolidated preliminary hearing and probation violation hearing, the trial court found that appellant violated many conditions of his probation, including that he obey all laws, promptly report to probation, avoid using or possessing illegal drugs, and comply with the protective order. The trial court later dismissed the new charges and sentenced appellant on the probation violations to a term in state prison of four years.

Discussion

Appellant contends the trial court abused its discretion when it imposed a prison term after his first probation violation. He claims he was confused about whether the protective order was still in effect. He further claims that he did not seriously injure T.H. during the second incident. At most, he "grabbed his girlfriend's arm while trying to prevent her from calling his probation officer to report that he was in violation. While appellant does not minimize this new act of domestic violence, he caused his girlfriend no real injury, and his acts were on the very low end of the scale of acts involving spousal abuse."

We review the order revoking probation for abuse of discretion. Trial courts have "very broad discretion in determining whether a probationer has violated probation."

(*People v. Rodriguez* (1990) 51 Cal.3d 437, 443.) We will interfere in the trial court's exercise of its discretion "only in a very extreme case" (*Ibid.*, quoting *People v. Lippner* (1933) 219 Cal. 395, 400.) "[A] trial court does not abuse its discretion unless its decision is so irrational or arbitrary that no reasonable person could agree with it." (*People v. Carmony* (2004) 33 Cal.4th 367, 377.)

The trial court's order was not arbitrary or irrational. T.H. and Officer Naganuma testified that appellant violated multiple conditions of his probation within the first week after his release from custody. Appellant did not promptly report to the probation office. He did not refrain from using drugs. He did not obey all laws. He did not comply with the protective order. These violations were not trivial.

The record also establishes that appellant has physically abused T.H. at least twice. In both the October 2017 and April 2018 incidents, appellant forcibly wrestled T.H.'s cell phone from her hands and took her car keys. This conduct physically isolates T.H., making it more difficult for her to protect herself and to report appellant's criminal behavior. The trial court reasonably expressed concern about the escalating dangerousness and severity of appellant's conduct in this regard.

Appellant demonstrated that he was not willing to comply with probation conditions and that he posed a grave risk of physical harm to T.H. Consequently, the trial court reasonably determined that appellant's probation should be revoked and that he should be sentenced to state prison. There was no abuse of discretion.

Conclusion

The judgment is affirmed.

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YEGAN, J.

We concur:

GILBERT, P. J.

TANGEMAN, J.

Michael J. Carrozzo, Judge

Superior Court County of Santa Barbara

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