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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

OYUKI ACOSTA,

Defendant and Appellant.

B282783

(Los Angeles County  
Super. Ct. No. MA067856)

APPEAL from a judgment of the Superior Court of  
Los Angeles County, Kathleen Blanchard, Judge. Affirmed.

Angelina Lane, under appointment by the Court of Appeal,  
for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief  
Assistant Attorney General, Lance E. Winters, Assistant  
Attorney General, Paul M. Roadarmel, Jr. and David A.  
Wildman, Deputy Attorneys General, for Plaintiff and  
Respondent.

## INTRODUCTION

Defendant Oyuki Acosta appeals from the court's revocation of her probation. The court found defendant in violation of her probation for failing to report to her probation officer and ordered her to serve her previously-suspended sentence. Defendant argues that the court abused its discretion by revoking probation based on a technical violation and ignoring defendant's circumstances. We affirm.

## FACTUAL AND PROCEDURAL HISTORY

### I. *Background*

The underlying case arises out of two alleged incidents perpetrated by defendant and her co-defendant, Alexis Navarro, on January 13 and January 24, 2016.<sup>1</sup> On January 13, 2016, victim Brent<sup>2</sup> reported the theft of his debit card, credit card, and fire department identification card from his locked car. The credit card was used the same day at the drive-through of a Jack-in-the-Box restaurant. Los Angeles County Sheriff's Deputy Chris Bergo reviewed the surveillance footage from the restaurant and matched a burgundy Toyota Camry using the drive-through to the receipt from the stolen credit card. At trial, deputy Bergo identified Navarro as the driver and defendant as the passenger in the Camry visible on the surveillance footage.

About 2:00 a.m. on January 24, 2016, victim Javier testified that he was sitting in his hotel room with a companion when defendant and Navarro walked in. Navarro pointed a gun at

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<sup>1</sup> We provide only a brief summary of the underlying crimes, based on the evidence presented at the preliminary hearing.

<sup>2</sup> Pursuant to California Rules of Court, rule 8.90 (b)(4), we refer to the victims in this case by first name to protect their personal privacy interests. No disrespect is intended.

Javier and demanded his belongings. While Navarro was looking through Javier's things, Javier "rushed him and tried to take the gun away from him." Defendant held Javier back, pulling his hair, and Navarro hit him over the head with the gun. Defendant then bound Javier's hands and feet with duct tape. Defendant was also carrying a small pocket knife in her hand.

Navarro took Javier's wallet and phone. Navarro also demanded the personal identification number (PIN) for Javier's debit card. Defendant left with the card; Javier later discovered that \$400 was missing from his account. When defendant returned to the room, she and Navarro covered Javier's eyes and mouth with tape. A short time later, two more men came into the room. Defendant said they were going to drop Javier off in the desert. One of the other men told Javier to take two pills, which he ingested. He then fell asleep.

When Javier woke up a few hours later, he was no longer bound. He reported the incident to the front desk at the hotel. He sustained a laceration to his head where he was hit with the gun.

After defendant and Navarro were arrested, Navarro told sheriff's deputies that he and defendant had rented the hotel room next door to Javier and had gone to Javier's hotel room to "party." Navarro asked to borrow money and Javier gave his debit card and PIN number to defendant. Navarro admitted taking \$400 from Javier's account, which was more than the "little bit" Javier had authorized.

## **II. *Information and Plea***

The Los Angeles County District Attorney (the People) filed a ten-count information on March 7, 2016. The information charged defendant with eight counts arising from the incident on

January 24, 2016 against Javier: one count of first degree burglary (Pen. Code, § 459; count one),<sup>3</sup> one count of assault with a semiautomatic firearm (§ 245, subd. (b); count two), one count of first degree robbery (§ 211; count three), one count of false imprisonment by violence (§ 236; count four), one count of identity theft (§ 530.5, subd. (a); count five), one count of assault by means of force likely to cause great bodily injury (§ 245, subd. (a)(4); count 10), one count of misdemeanor theft (§ 484e, subd. (d); count 14), and one count of administering a drug (§ 222; count 16). The information further charged defendant with two counts arising from the incident on January 13, 2016 against Brent: one count of second degree burglary of a vehicle (§ 459; count 12) and one count of identity theft (§ 530.5, subd. (a); count 13). As to multiple counts, the information also alleged that defendant personally inflicted great bodily injury (§ 12022.7, subd. (a)), that there was a principal armed with a firearm (§ 12022, subd. (a)(1)), and that defendant had served three prior prison terms for felony convictions (§ 667.5, subd. (b)).

Defendant pled not guilty and denied the special allegations. Thereafter, she withdrew her plea as to counts one and two and entered a plea of nolo contendere to one count of burglary (§ 459; count one) and one count of assault with a semiautomatic weapon (§ 245, subd. (b); count two). The court advised defendant that count one was a strike offense. Pursuant to the plea, the court sentenced defendant to the mid-term of six years in state prison on count two and one third the mid-term (16 months) on count one, to run consecutively, for a total of seven years and four months in state prison. The court ordered the

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<sup>3</sup> Unless otherwise indicated, all further statutory references are to the Penal Code.

execution of sentence suspended and placed defendant on formal probation for five years. Under the terms of defendant's probation, she was required to serve 201 days in county jail (with credit for time served), cooperate with the probation officer in a plan for a minimum six-month drug program, and report to her probation officer within 48 hours of release from custody. The remaining counts were dismissed pursuant to the plea.

### **III. *Probation Violation***

The trial court discussed its concerns regarding probation for defendant several times prior to the entry of defendant's plea. First, in advance of the preliminary hearing, the court discussed a plea offer extended to Navarro and defendant, which included five years of formal probation for defendant. The court told defendant that, "given the nature of these offenses, in order for me to even consider granting you probation, I have to make a finding that this is an unusual case" and that probation would be in the interest of justice. The court said that it was "very difficult for me to make that finding given your criminal history and the facts of this case." The court also noted defendant's "addiction issue" and that she had been "given a chance on probation in the past" for prior convictions. However, if defendant agreed to recognize and seek treatment for her narcotics addition, the court stated it was "willing to take a chance" and agree to probation. However, the parties then proceeded to the preliminary hearing.

Then, at a trial assignment hearing on May 4, 2016, the parties again discussed the potential plea deal. The court reiterated its concerns with the seriousness of the offenses charged and defendant's history of substance abuse, concluding that, "for her to be a viable candidate on probation, I think we need to see, especially given the nature of these offenses, that she

is willing” to agree to drug treatment. Defendant then agreed to the plea and was sentenced the same day. At the conclusion of that hearing, the court cautioned defendant, “Don’t forget to report to probation, too, ma’am, once you get out.”

According to the probation report, the probation officer sent a letter to defendant’s last known address on June 16, 2016, advising her to report for orientation on June 29, 2016. Defendant failed to do so. On July 14, 2016, the probation department requested a hearing for a possible probation violation by defendant. The court mailed a notice to appear to defendant at her last known address. Defendant failed to appear at the hearing on July 28, 2016. Accordingly, the court preliminarily revoked her probation and issued a bench warrant. After defendant was arrested on the bench warrant in April 2017, the court ordered a supplemental probation report and, at defendant’s request, set a formal probation violation hearing.

At the probation violation hearing, the probation officer testified that he attempted to contact defendant by sending her a letter at her last known address. That letter came back as undeliverable. To his knowledge, defendant had never made contact with the probation office.

The defendant did not present any evidence or argument contesting that she failed to report in violation of her probation. However, regarding sentencing, her counsel urged the court to allow defendant to continue probation. She noted that defendant had no new criminal charges and was facing significant difficulties, including transportation issues, “trying to get her kids back and dealing with the dependency court dates,” and trying to find a job.

The court found defendant in violation of probation based on her failure to report to the probation officer. The court further found that defendant was not suitable for probation, concluding that defendant “was advised of the consequences if she violated her probation. She was given a chance on probation and she just -- there’s no other way to put it -- just completely blew off all of her obligations. And certainly, in the court’s mind, there is nothing more important than her probation obligations under the circumstances.” Thus, the court terminated probation and imposed the previously-suspended sentence. Defendant timely appealed.

### DISCUSSION

Defendant contends the trial court abused its discretion in revoking her probation. We disagree.

A court may revoke probation “if the interests of justice so require and the court, in its judgment, has reason to believe . . . that the person has violated any of the conditions of his or her probation.” (§ 1203.2, subd. (a); see also *People v. Rodriguez* (1990) 51 Cal.3d 437, 447 (*Rodriguez*).) Accordingly, trial courts have “very broad discretion in determining whether a probationer had violated probation.” (*Rodriguez, supra*, 51 Cal.3d at p. 443, citing *People v. Lippner* (1933) 219 Cal. 395, 400 [“. . . only in a very extreme case should an appellate court interfere with the discretion of the trial court in the matter of denying or revoking probation. . . .”]; *People v. Pinon* (1973) 35 Cal.App.3d 120, 123 [“Probation is not a matter of right but an act of clemency, the granting and revocation of which are entirely within the sound discretion of the trial court. [Citations.]”].)

The facts supporting a probation revocation may be proven by a preponderance of the evidence. (*Rodriguez, supra*, 51 Cal.3d

at p. 447; *People v. Stanphill* (2009) 170 Cal.App.4th 61, 72.) We review the trial court's probation revocation order for an abuse of discretion and the court's factual findings for substantial evidence. (*Rodriguez, supra*, 51 Cal.3d at p. 447; *People v. Superior Court (Jones)* (1998) 18 Cal.4th 667, 681; *People v. Urke* (2011) 197 Cal.App.4th 766, 773.) "[T]he burden of demonstrating an abuse of the trial court's discretion rests squarely on the defendant. [Citation.]" (*People v. Urke, supra*, 197 Cal.App.4th at p. 773.)

The Supreme Court has observed that "the decision to revoke probation typically involves two distinct components: (1) a retrospective factual question whether the probationer has violated a condition of probation; and (2) a discretionary determination by the sentencing authority whether violation of a condition warrants revocation of probation." (*Black v. Romano* (1985) 471 U.S. 606, 611 (*Black*)). Here, defendant does not contest the trial court's finding as to the first component, namely, that she violated her probation by failing to report to the probation officer between May 2016 and April 2017. Instead, she argues that the violation was "purely technical" and not sufficiently severe to warrant termination of probation and reinstatement of a substantial prison term.

We are not persuaded. The court made it very clear to defendant several times when discussing her plea that it was hesitant to allow probation given the seriousness of her crimes, and stressed the importance of defendant's cooperation. In addition, at least twice on the record the court instructed defendant to report to her probation officer promptly and defendant indicated her understanding. However, there was no evidence that defendant made *any* attempt to contact or report to



the probation office for almost a year. Under these circumstances, the court did not abuse its discretion in revoking defendant's probation.

Further, this conclusion is unaltered by defendant's citation to cases finding an abuse of discretion for revoking probation based on violations that were not willful, were truly technical, or were not supported by the evidence. For example, in *People v. Galvan* (2007) 155 Cal.App.4th 978, 983, the court found the defendant's failure to report to probation was not willful, as he had been immediately deported upon his release from custody. (See also *People v. Zaring* (1992) 8 Cal.App.4th 362, 378-379 [trial court abused its discretion by revoking probation when defendant was 22 minutes late to a hearing]; *People v. Buford* (1974) 42 Cal.App.3d 975, 985 [court's finding that defendant failed to report was not supported by the evidence where, "at worst, he was tardy and undependable in reporting," but repeatedly attempted to remedy his missed appointments].) None of those situations is present here. Although defendant requested leniency from the court given her struggles with housing, transportation, and ongoing dependency proceedings, the court found that her complete lack of effort in meeting her probation obligations for almost a year warranted revocation of probation. This determination was within the bounds of the court's broad discretion.<sup>4</sup>

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<sup>4</sup> We also reject defendant's suggestion that the trial court was bound to follow the recommendation of the probation department to allow her to remain on probation. The trial court indicated it had read and considered the probation report. It was not required to follow that recommendation, nor to expressly reject all alternatives to incarceration. (See *Black, supra*, 471 U.S. at p. 613 ["the fairness guaranteed by due process does not

**DISPOSITION**

The judgment of the trial court is affirmed.

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COLLINS, J.

We concur:

WILLHITE, Acting P. J.

MANELLA, J.

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require a reviewing court to second-guess the factfinder's discretionary decision as to the appropriate sanction”].)