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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

ADRIAN MOON,

Defendant and Appellant.

B294215

(Los Angeles County
Super. Ct. Nos. 8PR05534,
8PR07115)

APPEALS from orders of the Superior Court of Los Angeles County, Donald S. Kennedy, Commissioner and Keith H. Borjón, Judge. Reversed; dismissed as moot.

Maxine Weksler, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Lance E. Winters, Assistant Attorney General, Wyatt E. Bloomfield and Corey J. Robins, Deputy Attorneys General, for Plaintiff and Respondent.

Adrian Moon appeals from a postjudgment order executing a 100-day sentence in county jail for violating the terms of his postrelease community supervision (PRCS).¹ Moon contends there was insufficient evidence to show a violation and the condition that he not harass any probation officer is unconstitutionally vague and overbroad. We reverse.

BACKGROUND

After Moon served time in prison for theft and fraud-related offenses, he was released and placed on PRCS in January 2018. On August 14, 2018 the Los Angeles County Probation Department (probation department) called and emailed Moon to report on August 17, 2018. Moon responded to the email, inquiring about auxiliary funds he had requested, but did not indicate whether he would report.

Moon did not report as instructed and the probation department filed a petition for revocation. At the revocation hearing, Moon said that he tried to report, but when he arrived at the probation office at 4:00 p.m., his probation officer had already gone home. He explained that he was late because he had other court appearances for separate matters that same day. Although the trial court accepted Moon's explanation, it nonetheless found that Moon failed to report in violation of his PRCS.

The trial court revoked and reinstated Moon's PRCS on the original terms, ordering him to serve 100 days in county jail, cooperate with a mental health assessment, and refrain from

¹ Moon filed a separate notice of appeal from an order related to a second petition to revoke his PRCS. However, that petition was dismissed in Moon's favor. The appeal in 8PR07115 is dismissed as moot.

harassing any probation officers. Moon completed his jail sentence but remains under mandatory supervision.

DISCUSSION

I. Moon's appeal is not moot

The People argue that Moon's appeal is moot because he has already served his sentence for violating his PRCS. Moon does not dispute that he has completed his sentence, but argues the appeal is not moot because the probation violation is part of his permanent record and a successful appeal would clear his record and remove the stigma of criminality. Further, Moon contends that he remains on mandatory supervision and the PRCS violation precludes an early discharge.

Relying on *People v. DeLeon* (2017) 3 Cal.5th 640, the People argue that none of the consequences identified by Moon are sufficient to overcome mootness. In *DeLeon*, defendant violated his parole and was sentenced to serve 180 days in custody. (*Id.* at p. 644.) While his appeal was pending, defendant completed his sentence and his parole supervision ended. (*Id.* at p. 645.) Although it found defendant's appeal moot, the California Supreme Court reviewed the challenge because the issue was of continuing public interest. (*Id.* at p. 646.) *DeLeon* rejected defendant's argument that his parole violation would have disadvantageous collateral consequences, finding that his parole violation would be just one of many factors a court may consider in deciding whether to grant probation or what sentence to impose in future cases. (*Ibid.*)

The facts here are distinguishable from *DeLeon* because Moon remains on mandatory supervision and the violation precludes Moon from early discharge from his PRCS. Penal Code

section 3456, subdivision (a)(3) provides: “The person who has been on postrelease supervision continuously for one year with no violations of his or her conditions of postrelease supervision that result in a custodial sanction shall be discharged from supervision within 30 days.” If we reverse the trial court’s finding that Moon violated his PRCS, and provided Moon has had no other violations, he would be eligible for discharge from PRCS. Thus, we can grant Moon some form of relief so his appeal is not moot.

II. Substantial evidence does not support the PRCS violation

Turning to the merits of Moon’s appeal, substantial evidence does not support the trial court’s finding that he violated his PRCS. The People must show a PRCS violation has occurred by a preponderance of the evidence (see *People v. Rodriguez* (1990) 51 Cal.3d 437, 447), and that the violation was willful (*People v. Galvan* (2007) 155 Cal.App.4th 978, 982). Where a defendant is unable to comply with a PRCS condition because of circumstances beyond his control and he is not willfully disobedient, revocation of PRCS is error. (See *People v. Zaring* (1992) 8 Cal.App.4th 362, 379.) We review the trial court’s factual findings for substantial evidence. (*People v. Gonzalez* (2017) 7 Cal.App.5th 370, 381.) A trial court’s decision whether to revoke PRCS will not be disturbed absent an abuse of discretion. (*Galvan*, at pp. 981–982.)

We find such an abuse of discretion here. The trial court accepted Moon’s explanation that he was in court on separate matters on the day he was supposed to report. He had prescheduled court appearances and the probation department instructed him to appear on a short two to three days’ notice. There is no evidence that Moon had missed any reporting dates

prior to August 17. The court also credited his representation that he tried to comply by taking public transportation in order to arrive at the probation office after his other court matters had concluded, but before the close of business. Nevertheless, his probation officer had already left for the day. These circumstances show that Moon's failure to report was not the result of irresponsibility, contumacious behavior or disrespect for the orders and expectations of the court. (See *People v. Zaring*, *supra*, 8 Cal.App.4th at p. 379.)

The trial court's revocation of Moon's PRCS was an abuse of discretion because his failure to report was not willful. Lastly, because we reverse the trial court's order imposing the additional condition that Moon refrain from harassing any probation officers, we do not address Moon's contentions that the condition is unconstitutionally vague and overbroad.

DISPOSITION

The order in 8PR05534 is reversed. The appeal in 8PR07115 is dismissed as moot.

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DHANIDINA, J.

We concur:

EDMON, P. J.

EGERTON, J.