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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE, Plaintiff and Respondent, v. DANIEL FIGUEROA CONTRERAS, Defendant and Appellant.	2d Crim. No. B257409 (Super. Ct. No. 1445902) (Santa Barbara County)

Daniel Figueroa Contreras appeals from the order revoking his parole. He contends that the trial court erred by concluding that he disabled his global positioning device (former Pen. Code, § 3010.10, subd. (a))[1] by failing to charge it; by concluding it must sentence him to 180 days in custody pursuant to former section 3010.10, subdivision (c); and by finding that he willfully violated section 3003.5 (Jessica's Law). The parties agree that the court should reconsider its finding that appellant violated the residency limitation contained in Jessica's Law because the basis for that finding has been superseded by the California Supreme Court decision in *In re Taylor* (2015) 60 Cal.4th 1019, and Directive No. 15-02 (March 25, 2015) issued by the California Department of Corrections

[1] All statutory references are to the Penal Code.

and Rehabilitation (CDCR) in response to *Taylor*. We remand to the trial court to reexamine its finding of a violation of Jessica's Law in light of *Taylor*. We reject appellant's remaining contentions, and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Prosecution Evidence

In 2011, appellant was convicted of failing to register as a sex offender (§ 290.018, subd. (b)(1)), and petty theft with a prior (§ 666). He was sentenced to prison. On May 4, 2014, he was released to the CDCR's Division of Adult Parole Operations.

As a section 290 registered sex offender parolee, appellant was required to keep a global positioning system (GPS) device secured to his ankle so that authorities could monitor his location remotely. (Former § 3010.10, subd. (a).) He reported to his parole officer, Erik Bates, on May 6. Bates provided appellant a Notice of Conditions of Parole (Notice) which listed the conditions of his parole, and discussed those conditions with him. Appellant signed the Notice and initialed several enumerated special conditions of parole, including condition 72 which states: "You shall charge the GPS device at least two times per day (every 12 hours) for at least 1 full hour for such charging time." He also initialed condition 74 which states: "You shall contact your parole agent immediately if and when the device vibrates and/or makes an audible tone (beep)." Bates explained the special GPS conditions and the operation of the GPS to appellant, and showed him how to charge it. Appellant "demonstrated" to Bates that "he could plug the charger on his ankle." Bates also instructed appellant "to charge it an hour in the morning and an hour at night every day."

On May 14, 2014, Bates received notice that the battery power on appellant's GPS was low. At 2:00 a.m., on May 18, 2014, he received a phone call reporting that appellant's GPS "device was dead." Later that morning, Bates sent officers to arrest appellant at the residence where he was staying in Goleta. He also called that residence and left a message for appellant. Bates later

retrieved more detailed records which indicated that in the three days leading up to May 18, appellant had only charged the GPS device for 13 minutes, which was not sufficient to keep it functional. The records further indicated that in another 48-hour period, appellant charged the device "for a total of two hours."

Defense Evidence

Appellant testified that while he was in prison, doctors removed a polyp that was found to be malignant. He sometimes needed to use "the restroom at a moment's notice." On May 18 he was charging the GPS and was forced to stop to use the bathroom. He was ready to resume charging the GPS when officers arrived and arrested him.

The trial court found appellant violated two conditions of parole by "[r]esiding within 2,000 feet of the school" and "disabling his GPS device." The court reasoned that the purpose of former section 3010.10 was "to keep someone who is a [section] 290 registrant subject to parole from removing" or disabling his GPS device. It observed that failing to charge a GPS would render it "nonfunctional" as effectively as "beating it about the head with a hammer or taking some other destructive device to it and rendering it useless."

DISCUSSION

Appellant Violated Former Section 3010.10, subdivision (a)[2]

Appellant contends the trial court misinterpreted former section 3010.10, subdivision (a) by concluding that he violated its provisions. He argues the statute's prohibition against disabling a GPS device does not encompass a failure to charge the device. We disagree.

"Issues of statutory interpretation are questions of law subject to de novo review." (*People v. Simmons* (2012) 210 Cal.App.4th 778, 790.)

At the time of appellant's arrest and conviction for violating former

[2] The Legislature amended section 3010.10 in 2014, effective January 1, 2015. Section 3010.10 still prohibits sex offender registrant parolees from removing or disabling their GPS devices. (*Id.* subd. (b).)

section 3010, subdivision (a), it read as follows: "A person who is required to register as a sex offender pursuant to [s]ection 290 shall not remove or disable, or permit another to remove or disable, an electronic, global positioning system (GPS), or other monitoring device affixed to his or her person as a condition of parole, when he or she knows that the device was affixed as a condition of parole."

In arguing that former section 3010.10 "did not encompass the failure to keep the GPS charged," appellant stresses certain comments of the author of Assembly Bill 2121 (AB 2121) legislation which revised the statute in 2014. AB 2121 moved the language which prohibits removing and disabling a GPS into subdivision (b). The revised subdivision (b) reads: "A person who is required to register as a sex offender pursuant to section 290 shall not remove, disable, *render inoperable, or knowingly circumvent the operation of*, or permit another to remove, disable, r*ender inoperable, or knowingly circumvent the operation of*, an electronic, GPS, or other monitoring device affixed to his or her person as a condition of parole, when he or she knows that the device was affixed as a condition of parole." (Italics added.)

Appellant argues the legislative history of AB 2121 "indisputably demonstrates" that prior to the 2014 amendments, section 3010.10 "did not encompass the failure to keep the GPS battery charged." In support, he cites a comment by the bill's author (made at the August 20, 2014 Assembly Floor Analysis for AB 2121) that states "there is no statute that provides for any recourse . . . if the parolee willfully renders the device inoperable without physically removing the device."

The author's comment is unavailing. "[A] legislative declaration of an existing statute's meaning is neither binding nor conclusive in construing the statute. Ultimately, the interpretation of a statute is an exercise of the judicial power the Constitution assigns to the courts." (*Western Security Bank v.*

Superior Court (1997) 15 Cal.4th 232, 244 [post-passage comments of an individual legislator do not control the meaning of a statute].)

Appellant also claims that he did not "knowingly circumvent" the operation of the GPS by failing to charge it. The record belies his claim. Appellant expressly acknowledged his obligation to keep the GPS charged by accepting the terms of his parole, including the condition that he charge it for one hour or more each morning and each evening. The undisputed evidence established that appellant failed to meet that obligation. Because he knew he was obligated to keep the GPS charged, he was subject to a criminal penalty for failing to do so. (*People v. Barker* (2004) 34 Cal.4th 345, 351-352.)

The Trial Court Properly Imposed the Statutorily Mandated 180-Day Sentence

Appellant also contends that the trial court erred in concluding that former section 3010.10, subdivision (c) required it to impose a 180-day sentence for a violation of former section 3010.10, subdivision (a). He argues that because the trial court, rather than the parole board, was vested with the authority to revoke his parole pursuant to section 3000.08, the court necessarily retained the power to impose a different sentence than the 180-day sentence provided by former section 3010.10, subdivision (c). We disagree.

Relevant Legislation and Statutes

"In 2011, the Legislature enacted realignment legislation which amended a 'broad array of statutes concerning where a defendant will serve his or her sentence and how a defendant is to be supervised on parole.' [Citation.]" (*Williams v. Superior Court* (2014) 230 Cal.App.4th 636, 650 (*Williams*).) "In 2012, as part of the realignment system, the Legislature amended section 1203.2 (which previously dealt solely with the revocation of probation) to apply to the revocation of supervision (§ 1203.2, subds. (a), (f)(3)), thereby establishing a uniform process for revocation of parole, probation, and postrelease supervision of most felons." (*Williams, supra,* at pp. 650-651.) "Consequently, under

current section 1203.2, the court has authority to revoke the supervision of a person on grounds specified in the statute. (§ 1203.2, subds. (a), (b).) Previously the Board of Parole Hearings conducted parole probable cause and revocation hearings. [Citation.]" (*Williams*, *supra*, at pp. 650-651.) "In enacting the realignment legislation, the Legislature declared its intent that the statutory amendments that established section 1203.2's uniform procedure 'simultaneously incorporate the procedural due process protections held to apply to probation revocation procedures' under *Morrissey* [*v. Brewer* (1972) 408 U.S. 471] and *People v. Vickers* (1972) 8 Cal.3d 451, 459, []which applied the *Morrissey* parole revocation protections to probation revocation[] and their progeny. (Sen. Bill No. 1023 (2011-2012 Reg. Sess.) § 2.)" (*Williams*, *supra*, at p. 651.)

"Section 3000.08, govern[s] parole supervision [and] contains the following relevant provisions. If a parole agent or peace officer has probable cause to believe a parolee is violating parole, the agent or officer may, without warrant, 'arrest the person and *bring him or her before the court*, or the court may, in its discretion, issue a warrant for that person's arrest[.]' (*Id*. subd. (c), italics added.) If the supervising parole agency finds 'good cause' that the parolee violated the law or a parole condition, the agency may impose additional conditions of supervision and '*immediate*, structured, and intermediate sanctions . . ., including flash incarceration[.]' (*Id*. subd. (d), italics added.) . . . Periods of 'flash incarceration' . . . are encouraged as one method of punishment for violations of a parolee's conditions of parole.' (*Id*. subd. (d), italics added.) . . . 'If the supervising parole agency has determined . . . that intermediate sanctions . . . are not appropriate, the supervising parole agency shall, pursuant to [s]ection 1203.2, *petition* [*the court*] to revoke parole.' (*Id*. subd. (f), [italics added].) If the court finds the parolee has violated the conditions of parole, it may (1) return the person to parole supervision with modifications of conditions, if appropriate, (2) revoke parole and order the person to confinement in county jail, or (3) refer

the person to reentry court or an evidence-based program. (*Ibid*.)" (*Williams*, *supra*, 230 Cal.App.4th at pp. 651-652.)

Section 1203.2, governs the procedure for revocation of supervision, including parole. (*Id.* subd. (a).) "If a probation or parole officer or a peace officer 'has probable cause to believe that the supervised person is violating any term or condition of his or her supervision, the officer may, without warrant or other process, . . . rearrest the supervised person *and bring him or her before the cour*t,' or the court may issue a rearrest warrant.' (*Ibid.*, italics added.) The court may revoke the supervision of the person '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 supervision[.]' (*Ibid*.) The court may also revoke supervision upon [the petition of the parole office] or the district attorney (*id*., subd. (b)(1)), based on the . . . *parole officer's written report* (*id*., subd. (b)(2)). Nothing in section 1203.2 'affects the authority of the supervising agency to impose intermediate sanctions[.]' (*Id*. subd. (g), italics added.)" (*Williams*, *supra*, 230 Cal.App.4th at pp. 652-653.)

Collectively, sections 3000.08, 3010.10, subdivision (c), and 1203.2 are part of an overall statutory scheme governing parole supervision and revocation. Sections 3000.08 and 1203.2 establish a general framework for parole eligibility, the enforcement of parole terms, procedures for conducting hearings, and procedures for petitioning a court to revoke parole. Section 3010.10 concerns parole revocation for one narrow class of parolees and conduct–sex offender registrant parolees who remove or disable their GPS devices. (Former § 3010.10, subd. (a); § 3010.10, subd. (c).) It also compels the revocation of parole for such conduct, and authorizes only one sentence, with no

provision for intermediate sanctions–the revocation of parole and incarceration in a county jail for 180 days. (Former § 3010.10, subd. (c); § 3010.10, subd. (e).)[3]

The language of former section 3010.10, subdivision (c) ostensibly vests the parole agency with authority to impose the sentence, by stating "the parole authority shall revoke the person's parole and require that he or she be incarcerated in a county jail for 180 days." (Former § 3010.10, subd. (c); § 3010.10, subd. (e).) However, the Legislature indisputably vested the court with the power to revoke parole and conduct revocation proceedings. (See §§ 1203.2, subds. (b) & (c), 3000.08, subd. (a).)

Here, the prosecution filed a petition and asked the trial court to revoke appellant's parole pursuant to former section 3010.10, subdivision (c). The court found appellant had violated section 3010.10, subdivision (a), revoked his parole and sentenced him to 180 days in county jail. Appellant argues that the trial court thereby erred because it had authority to revoke his parole pursuant to section 3000.08, and impose a different sentence than the 180-day sentence specified in section 3010.10, subdivision (c). We disagree.

The trial court properly relied upon former section 3010.10 rather than section 3000.8 to revoke appellant's parole and sentence him. Former section 3010.10 is a specific statute which targeted a narrow category of conduct

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[3] Because former section 3010, subdivision (c) authorizes only one sanction, we reject appellant's contention that the parole agency's failure to consider or impose intermediate sanctions before petitioning the trial court for revocation of his parole violated his rights and vitiated the revocation proceedings. During oral argument, his counsel cited *People v. Osorio* (2015) 235 Cal.App.4th 1408, in arguing that intermediate sanctions are mandatory. *Osorio* is unavailing. Osorio was not a sex offender registrant who received a statutorily mandated 180-day sentence for violating section 3010.10. He spoke with two gang members for 10 minutes while subject to a parole condition barring his contact with them. Based on that conduct, the parole officer successfully petitioned the court to revoke parole, and Osorio received a 73-day jail sentence. (*People v. Osorio*, *supra*, at pp. 1411-1412.) In reversing the trial court orders, the reviewing court stated Osorio's conduct did not warrant revocation of parole, and the parole agent should have imposed an intermediate sanction. (*Id*. at pp. 1412-1415.)

(the removal or disabling of GPS devices by a sex offender registrant parolee). The Legislature concluded that a separate statute–section 3010.10–was required to prohibit and punish that conduct. In contrast, section 3000.8 is a general statute that applies to multiple categories of parolees and conduct. When a specific statute and a general statute cover the same subject, it is well settled that the more specific one prevails. (*People v. Ahmed* (2011) 53 Cal.4th 156, 163.)

We interpret former section 3010.10, subdivision (c) to mandate a 180-day sentence for violations of former section 3010.10, subdivision (a). Our primary objective in statutory interpretation is to "ascertain and effectuate the Legislature's intent." (*People v. Robles* (2000) 23 Cal.4th 1106, 1111.) Where the statutory language is clear, we presume the Legislature meant what it said, and the plain meaning governs. (*People v. Allegheny Casualty Co.* (2007) 41 Cal.4th 704, 708.) "In determining legislative intent, we look to the entire statutory scheme of which the provision is a part.'" (*T.O. IX v. Superior Court* (2008) 165 Cal.App.4th 140, 146.) "'[O]nce a particular legislative intent has been ascertained, it must be given effect even though it may not be consistent with the strict letter of the statute.'" (*Ibid.*)

There is compelling evidence that the Legislature intended to provide a mandatory 180-day sentence for violations of former section 3010.10, subdivision (a). Former section 3010 was enacted in 2013 by Senate Bill 57 (SB 57). (Stats. 2013, ch. 776, § 4.) The bill's author made the following comments regarding the need for SB 57: "Over the last few years, an alarming increase of parolees monitored by GPS, including high-risk sex offenders and gang members have removed or disabled their electronic global positioning system monitoring devices. In many instances, these offenders have committed new crimes, including sexual battery, kidnapping and attempted manslaughter. [¶] These documented increases jeopardize the entire GPS monitoring system and put the program at risk of failure if parolees are not deterred from disabling their tracking devices[.] Senate Bill 57 seeks to deter parolees from cutting off

their GPS bracelets in order to reduce the risks of offenders committing new violent crimes." (SB 57, April 22, 2013 Analysis for Senate Committee on Public Safety, p. 7.) Furthermore, each analysis of SB 57 described a penalty of 180 days in county jail for sex offender parolees who remove or disable GPS devices. (*Id* at p. 22; May 7, 2013, Analysis for Senate Appropriations Committee, p.1; Leg. Counsel's Dig., SB 57, stats 2013 (2013-2014 Reg. Sess.) Summary Dig., ch 776 [disabling a monitoring device "would require the parole authority to revoke the person's parole and impose a mandatory, 180-day period of incarceration"].)

When read in the context of the other parole revocation statutes, we conclude that former section 3010.10 subdivision (c) mandates a 180-day sentence for violations of former section 3010.10, subdivision (a). The legislative history compels the same conclusion.

DISPOSITION

Upon remand, the trial court shall reconsider its finding that appellant violated Jessica's Law, in light of *In re Taylor*, *supra*, 60 Cal.4th 1019. Otherwise the judgment is affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Clifford R. Anderson III, Judge

Superior Court County of Santa Barbara

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