

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

THOMAS MICHAEL RITCHIE,

Defendant and Appellant.

B270345

(Los Angeles County
Super. Ct. No. SA085301)

APPEAL from a judgment of the Superior Court of
Los Angeles County. Kathryn A. Solorzano, Judge. Affirmed.

Roberta Simon, under appointment by the Court of Appeal,
for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler,
Chief Assistant Attorney General, Lance E. Winters, Assistant
Attorney General, Steven D. Matthews and Ryan M. Smith,
Deputy Attorneys General, for Plaintiff and Respondent.

On June 23, 2014, defendant and appellant Thomas Michael Ritchie pleaded nolo contendere to second degree robbery. (Pen. Code, § 211.)¹ Imposition of sentence was suspended, and defendant was placed on formal probation for a period of four years with various terms and conditions.

On February 26, 2015, probation was revoked. On June 4, 2015, defendant stipulated to a violation of probation. The trial court found defendant in violation of probation. Probation was revoked and then reinstated, and defendant was ordered to engage in drug counseling.

On December 16, 2015, defendant was arrested. His probation was revoked. At the probation revocation hearing on January 14, 2016, defendant admitted a violation of probation for failure to complete drug counseling. The trial court again revoked probation and sentenced defendant to the low term of two years in state prison. He was awarded 172 days of presentence custody credit.

Defendant timely appeals, arguing that the trial court erred in failing to indicate that it was aware that it could reinstate probation with more stringent modifications. He asks that we remand the matter for resentencing, specifically to allow

¹ All further statutory references are to the Penal Code unless otherwise indicated.

the trial court to exercise its discretion and determine whether to reinstate probation on modified terms.

We affirm.

PROCEDURAL BACKGROUND

At the probation revocation hearing, defense counsel asked the trial court for another chance on probation. His attorney explained that defendant had not yet attended a drug treatment program because he was taking on the responsibilities of caring for his new infant; thus he asked for one more chance on probation. The trial court noted that at the last probation violation hearing, defendant indicated that he had a substance abuse problem. The trial court then stated: “I had him spend some actual time in custody to try to get him to understand what it would be like to serve a significant time in custody. I wanted him to know what the consequences of a violation would be in the future.

“He indicated he had a drug problem. I made an order that he would—he must engage in drug counseling, which he did not do.

“He has been identified by the Probation Department as somebody who needs greater supervision, which is actually a good thing. They are actually doing their job.

“And he has been inconsistent in meeting their expectations. So at this point [there] is enough for me to feel at

this time that I can indicate the following, that if he admits that he's in violation of probation, I will give him the low term."

The trial court then recapped defendant's criminal history, stating: "And here is what my concerns—my concern is if I leave him out of custody, he is going to get into more trouble than he got into in this particular case. [¶] . . . [¶]"

"And I actually think I'm doing him a favor. Now, somebody else may say sending him to prison means he's just going to become more institutionalized in terms of his criminality. I don't agree. He's going to be off the streets."

Defendant then admitted a violation of probation for failure to complete drug counseling. The trial court revoked probation and sentenced him to the low term of two years in state prison.

DISCUSSION

"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." (*People v. Pinon* (1973) 35 Cal.App.3d 120, 123.) "When the defendant violates the terms of probation or is otherwise subject to revocation of probation, the sentencing judge may make any disposition of the case authorized by statute." (Cal. Rules of Court, rule 4.435(a).) Section 1203.2, subdivision (a), provides, in relevant part, that "the court may revoke and terminate the supervision of the person if the interests of justice so require and the court, in its

judgment, has reason to believe from the report of the probation or parole officer or otherwise that the person has violated any of the conditions of his or her supervision . . . regardless of whether he or she has been prosecuted for such offenses.” Section 1203.2, subdivision (b), continues: “[T]he court . . . may modify, revoke, or terminate the supervision of the supervised person upon the grounds set forth in subdivision (a) if the interests of justice so require.”

“[A] decision to revoke probation when the defendant fails to comply with its terms rests within the broad discretion of the trial court.” (*People v. Covington* (2000) 82 Cal.App.4th 1263, 1267.) “[W]hen considering probation revocation [a trial court’s analysis] is not directed solely to the probationer’s guilt or innocence, but to the probationer’s performance on probation. Thus the focus is (1) did the probationer violate the conditions of his probation and, if so, (2) what does such an action portend for future conduct?” (*People v. Beaudrie* (1983) 147 Cal.App.3d 686, 691.)

We review the trial court’s decision for abuse of discretion. A ruling will be set aside where it appears that the trial court failed to exercise the discretion vested in it by law; similarly, when a sentence is based upon an erroneous understanding of the law, the matter must be remanded. (*People v. Downey* (2000) 82 Cal.App.4th 899, 912; see also *People v. Aubrey* (1998) 65

Cal.App.4th 279, 282.) However, “abuse of discretion is not presumed from a silent record, but must be clearly shown by appellant.” (*People v. Preyer* (1985) 164 Cal.App.3d 568, 574.)

Here, the trial court properly exercised its discretion when it found that defendant had violated the terms of his probation and sentenced him to state prison. As set forth above, the trial court made a thoughtful appraisal of its options, in light of defendant’s criminal history and previous opportunities when sentenced to probation. It follows that there is no basis for us to infer that the trial court failed to exercise its discretion when it sentenced defendant to the low term of two years in state prison. (*People v. Henson* (1991) 231 Cal.App.3d 172, 182.)

Defendant contends that the trial court was unaware that it had the discretion to reinstate probation again on more stringent terms, including a longer incarceration in jail. Defendant is mistaken. As reflected in the trial court’s comments at the hearing, the trial court previously ordered defendant to a longer time in custody in an effort to “get him to understand what it would be like to serve a significant time in custody.” It did not work, prompting the trial court to sentence defendant as it did. Thus, even though the trial court did not expressly mention the option of reinstatement on probation with modified terms, the record demonstrates that the trial court was well aware of its

options; however, it chose not to fashion the sentence that defendant now seeks.

It follows that it is not reasonably probable that defendant would have obtained a more favorable result. The trial court heard all of defendant's arguments and considered the evidence in front of it, including defendant's respect to the Probation Department and his shouldering of responsibility for caring for his newborn infant. It then exercised its discretion and determined that the low term of two years in state prison was the appropriate sentence. Defendant offers no basis for us to disturb the trial court's ruling.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, Acting P. J.
ASHMANN-GERST

We concur:

_____, J.
CHAVEZ

_____, J. *
GOODMAN

* Retired Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.