

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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 THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

ANGELIQUE CANTRELL,

Defendant and Appellant.

B283626

Los Angeles County
Super. Ct. No. MA062757

APPEAL from an order of the Superior Court of
Los Angeles County, Kathleen Blanchard, Judge. Reversed.

Andrea Keith, 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, Chung L. Mar and Analee J. Brodie, Deputy
Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Angelique Cantrell appeals from the trial court's order finding her in violation of probation for failing to complete court-ordered community service, terminating probation, and executing a suspended prison sentence. Cantrell reported monthly, committed no more crimes, and made payments to the probation department. But Cantrell failed to complete her community service after she was diagnosed with multiple sclerosis. Cantrell contends the court abused its discretion in declining to follow her probation officer's recommendation to reinstate her probation. Based on the entire record in this case and its unusual facts, we agree the court abused its discretion in finding Cantrell willfully violated the terms of her probation and in executing Cantrell's three-year sentence.

FACTS AND PROCEDURAL BACKGROUND

1. *The charges and negotiated disposition*

In March 2014, Cantrell went to the state prison in Lancaster to visit someone. Cantrell had about half an ounce of methamphetamine, .07 ounces of hashish, and 1.8 ounces of marijuana hidden in her bra. In a felony complaint, Cantrell was charged with three counts of possessing contraband in jail in violation of Penal Code section 4573.6, subdivision (a).¹ Cantrell had no felony record. She had been convicted of two misdemeanor Vehicle Code violations—reckless driving and driving without a license—about eight years earlier.

On May 7, 2014, Cantrell entered into a plea deal with the People in an early disposition court (Judge Christopher G. Estes, presiding). Cantrell pled to one of the three counts. In

¹ References to statutes are to the Penal Code.

accordance with the parties' agreement, Judge Estes sentenced Cantrell to the midterm of three years in state prison (to be served in the county jail) but suspended execution of that sentence and placed Cantrell on probation for three years. Judge Estes ordered Cantrell to report to her probation officer and perform 60 days of "community labor."

2. *The modification of probation*

At some point between May 2014 and October 2015, Cantrell was diagnosed with multiple sclerosis. Cantrell presented "a doctor's note" to the probation department. Probation set the matter on the court's calendar. In the set-on notice, Deputy Probation Officer (DPO) Marcos Garcia informed the court that Cantrell was "in compliance with all terms and conditions" of her probation: she was reporting monthly, had no new arrests, had provided a DNA sample, had met with the financial evaluator, and was making payments of \$10 each month in accordance with her payment plan with Probation. Garcia wrote, "The probation officer does not object to deleting the community service requirement due to the defendant's medical condition."

Cantrell came to court as ordered on December 9, 2015. Judge Kathleen Blanchard, presiding in that court, told Cantrell, "Ms. Cantrell, the reason why you're here is you're on formal felony probation to this court. As part of your plea agreement I know the deal was that you were going to do 60 days' community labor. I understand you have a medical condition that is going to prevent you from doing that community labor, at least make it very difficult for you to do so. I spoke with your attorney and with the DA. And if you're in agreement, what the DA is willing to do is let me modify your sentence so I'll convert that 60 days of

community labor to 90 days of light duty community service.” Cantrell answered, “Okay.” Cantrell’s public defender said she had discussed the matter with her client and Cantrell was agreeable. The court continued, “At this time, Ms. Cantrell, what I’m going to do is modify the conditions of your probation to strike the order that you complete the 60 days of community labor and instead order that you complete 90 days of light duty community service. You do need to get working on that. That’s a lot of days. So I’m going to require that you do community service.” The court asked defense counsel if Cantrell could do “at least two days a week . . . so it would be 16 hours a week.” Defense counsel told the court Cantrell was not working and could do “the two days a week.” The court stated, “Okay. Perfect. So I am going to require that you complete that community service at a rate of no fewer than two 8-hour days per week. Show proof of completion of at least 45 days of that community service to your [probation officer] no later than June 6th of 2016. Proof of completion of all of it to your [probation officer] by December 8th of [2016]. So that gives you six months to do the first 45 days and then you get an additional six months to do the last 45 days.” The court asked Cantrell if she understood that and agreed, and Cantrell answered, “Yes, ma’am.”

3. ***The 2017 set-on and the preliminary revocation of probation***

In March 2017, DPO Garcia sent a notice to the court that Cantrell “appear[ed] to be in violation” of her probation for “fail[ure] to pay as directed” and “to complete 90 days of community service.” Garcia wrote that Cantrell had met again with the financial evaluator in January 2016, was to pay \$25 each month, and had paid a total of \$810. Garcia also stated he

had called Cantrell about the community service “and she reported she has not completed her community service due to medical conditions.” Garcia said Cantrell was to fax medical records to him but she had “failed to furnish such medical document [sic].” Garcia wrote, “It is recommended the defendant be found in violation of probation, that the defendant serve suitable time in custody in lieu of community service, that probation terminate upon release from custody,” and that the probation department receive a judgment against Cantrell for the cost of probation services.

Cantrell appeared in court as ordered on April 20, 2017. The court addressed Cantrell: “Ms. Cantrell, the reason why you’re here is you’re on formal felony probation to this court with a three-year sentence hanging over your head. As part of your original plea agreement back in 2014, you agreed to do 60 days of community labor. You came back before this court in December of 2015 having done none of that but having brought us some information about your medical condition. You convinced the court to convert that 60 days of community labor to 90 days of light duty community service, which I did. At that time, I also stressed to you the importance of you fulfilling this term of your probation, and I ordered you to complete that community service at a rate of at least two full eight-hour days per week, and I gave you deadlines to show that completion to your probation officer. Imagine my dismay when I learned from probation today that you have completed none of that community service. Based on what I’ve read here, I am going to preliminarily find you in violation of your probation, and I am going to preliminarily

revoke your probation.” Cantrell’s public defender² asked for a hearing “within a reasonable period” and a supplemental probation report. Judge Blanchard remanded Cantrell and set bail at no bail. Cantrell’s attorney did not object to the remand or ask the court to set bail, but he did tell the court, “She does have multiple sclerosis. So if I could have a medical order so that she can be seen by a doctor.” The court answered, “Absolutely.”

4. ***The probation violation hearing and execution of sentence***

About six weeks later, on June 1, 2017, the court commenced a formal probation violation hearing. Before the hearing, DPO Garcia submitted a supplemental report prepared on May 8, 2017.³ The report noted that, had the court not revoked Cantrell’s probation on April 20, it would have expired on May 6, 2017. Garcia repeated some of the information in his earlier reports: that Cantrell had provided a DNA sample, had been on the “automated minimum supervision caseload,” reporting monthly “via kiosk,” had no arrests other than the April 20 remand, and had paid \$860 toward her court fines and fees and probation supervision costs. Garcia stated he had

² Cantrell was represented by a different public defender than the attorney who had appeared with her at the December 9, 2015 proceeding.

³ Cantrell asserts the court did not read the supplemental report. Cantrell is mistaken. Although the report was not file-stamped by the clerk until July 7, 2017, Judge Blanchard signed the line on page 4 of the report that states, “I have read and considered the foregoing report of the probation officer.” At the hearing, the prosecutor marked the report as an exhibit, and he and the court conversed about its attachments.

“contacted” Cantrell (at the county jail, obviously) by videoconference on May 5, and “[s]he reported she did start her community service at the ‘Acts Thrift Store’ and completed 73 hours of her community service. However, she was having medical problems pertaining to her multiple sclerosis treatment/medication that kept her from continuing community service.” Garcia reported that Cantrell’s sister had brought “medical and community service documentation” to the probation department on April 28, 2017. Garcia attached copies of both a letter from the manager of the Acts Thrift Store verifying that Cantrell had completed 73 hours and 49 minutes of community service⁴ and a note on a prescription pad from Fares Elghazi, M.D. (Dr. Elghazi’s handwriting is difficult to read. In part, the note says, “Ms. Cantrell’s medical condition precludes her from excessive physical activity. She requires frequent resting [remaining six words are illegible].” Garcia concluded, “Although the defendant appears to have a medical excuse as to why she failed to complete her community service, the defendant had been rendered [*sic*] ample time within her 3 year grant of probation to complete community service. Therefore, the following is submitted as recommendation. [¶] It is recommended the defendant be found in violation of probation; probation be reinstated and time served for community service; a judgment be ordered against the defendant and in favor of the Los Angeles County Probation Department for costs of probation services, in the amount of \$3645.00, less credit for all payments made to date pursuant to [§] 1203.1(b); probation be allowed to expire.”

⁴ This works out to about nine and one-quarter days of community service.

At the June 1, 2017 hearing, the prosecutor called DPO Garcia to testify. Garcia essentially repeated what he had written in his supplemental report. On cross-examination, Garcia testified Cantrell reported each and every month. Defense counsel asked Garcia about his statement that Cantrell did appear to have a medical excuse for failing to complete community service. The court interjected, reading aloud the “ample time” sentence from Garcia’s report. The court went on, questioning Garcia directly, reminding him she had ordered Cantrell to do at least two full days of community service each week. The court asked Garcia, “So when the court ordered light duty, do you see any reason why a medical condition that prohibits an individual from excessive physical activity and requires frequent resting; that that would prohibit anybody from doing light community service?” Garcia answered, “No.”

When defense counsel resumed questioning, he asked Garcia if he ever had been notified that the community service office would not honor the “light duty” community service order. Garcia said he had not. Reviewing his file, Garcia then testified his assistant had mailed Cantrell a referral for light community service in December 2015. Garcia stated he remembered that Cantrell lost that referral and came into the probation department for a replacement. Garcia said the second referral was “different” from the first one, and he could not recall if it authorized light duty community service.

The parties agreed the court could take judicial notice of its file and the prosecutor rested.

Defense counsel called Cantrell to testify. Cantrell stated she has multiple sclerosis and suffers from “poor vision” and “lots of pain.” She said, “I fall a lot when I walk.” Cantrell testified

she had been seeing Dr. Elghazi for about 18 months. Cantrell said she had lost her first referral form for light duty community service and so drove to the probation department to get a duplicate from Garcia. Cantrell testified she took the second form “back to the court so they could assign [her]” and “told the lady that I’m supposed to do light duty.” The woman told Cantrell the document did not say that. Cantrell “went to the third floor and asked them to honor the light duty” but “[t]hey said that my paper didn’t state that” and “[s]o they were unable to honor it.”

Cantrell testified the work she had done at the thrift store was not light duty. Cantrell said she could not continue at the thrift store because that assignment required her to stand and her “legs give out on [her] a lot.” Cantrell said she “fall[s] a lot” and, if she stands on her feet for too long she gets light-headed. Cantrell tried to reach her probation officer, Garcia, and spoke with his assistant. The assistant told her she had to go to court “and speak with the judge.” Cantrell testified she tried to speak with the judge by going to “the court lines.” “And . . . [a]t the window they told [her] that [she] was unable to just go in as a walk-in.” Cantrell stated she receives injections of Copaxone three times a week for her multiple sclerosis. The side effects, Cantrell said, include “[i]nstant throwing up, instant having to use the restroom to defecate, hives on my face, back, itching.” Cantrell continued, “And sometimes—not all the time—after that’s done, I’m unable to walk.” Cantrell testified she was not able to speak with Garcia directly after her unsuccessful attempt to go to court.

On cross-examination, Cantrell testified she stopped working at the thrift store because “I was unable to and due to,

like, my falling and standing up I—I have back spasms and—and things like that.” She added that she had called the probation department. Cantrell testified that in the summer of 2016 she came to the courthouse and was told she “couldn’t come as a walk-in because of it being felony court.”

The court interrupted the prosecutor and asked Cantrell a series of questions. In response to the court’s question, Cantrell said she was told (apparently by the community service office) to get a letter from her probation officer. Cantrell stated she called Garcia and spoke with his assistant. Cantrell continued, “I told her I went and I told her what they told me.” The court asked, “And did you obtain a letter for a set-on date?” Cantrell answered, “I did not.” The court asked, “Did you make any contact with the public defender’s office that represented you in this case?” Cantrell responded, “No. I didn’t know that that was an option. I thought everything had to be done through probation.” The court asked, “And did you read any notices on the kiosk that you needed to be mindful of your community service conditions?” Cantrell answered, “I did.” The court asked, “And did you do anything in response to seeing those on the kiosk?” Cantrell responded, “I called and I spoke with his assistant again.”

On redirect, Cantrell testified her multiple sclerosis left her unable to stand for long periods “[j]ust about every day.” Defense counsel said he had no further questions. The court then asked Cantrell more questions. The court reminded Cantrell of the conversion of community labor to light duty community service “at [her] request” and of the court’s order that she do at least 16 hours a week. In response to the court’s questions, Cantrell said she did not remember the court setting a June 2016 deadline for

half of the hours. The court said it could order a transcript but it “distinctly remember[ed] setting those dates.” Cantrell’s attorney then said he would stipulate to that. The court then asked Cantrell, “Ms. Cantrell, after going to your probation officer after initial diagnosis and coming into court and specifically getting everything modified to light duty, which you said you could do, setting up a schedule to do it by; is it your testimony that because it allegedly wasn’t in a letter, that you just gave up trying to do the light duty community service?” Cantrell responded the light duty “wasn’t on the documents that [she] had.” The court continued, “Correct. And so what you’re saying is, rather than make the efforts necessary to come in and get a minute order showing that, or to go to probation and insist that they put a set-on because there’s some sort of clerical error; your testimony is simply that you stopped doing it because the paperwork didn’t reflect light duty; is that your testimony?” Cantrell responded that she “tr[ie]d to speak with [her] probation officer . . . to get it changed” and “spoke with his assistant.” The court said, “Right. And when that didn’t result in you getting a set-on, like you had done in the past through probation . . . you just stopped your efforts and stopped doing the community service; is that accurate?” Cantrell answered, “Yes.”

Cantrell’s attorney told the court he had no further witnesses but that he had subpoenaed Cantrell’s medical records from Huntington Hospital and the custodian had failed to appear. The court proposed the parties return in about two weeks. The court also admitted into evidence 37 pages of medical records from Dr. Elghazi.

The hearing continued on June 15, 2017. Cantrell’s counsel submitted 55 pages of medical records. The parties agreed to

return in a week. (The matter apparently was later continued to July 7, 2017.) On July 7, the court stated it had gone through the medical records, reviewed the transcript of the December 9, 2015 modification proceeding, and considered the testimony received at the hearing. Cantrell's attorney asked the court "to consider converting that 90 days [of community service] to some reasonable amount of jail time without imposing the ESS." Defense counsel noted the medical records demonstrated Cantrell had "serious limitations" and the injections "can incapacitate her with some pretty severe side effects." He said "there was obviously some miscommunication," noting Cantrell tried to sign up for light duty community service, "was rejected" because of her paperwork, and had trouble reaching her probation officer because of the kiosk reporting and his "secretary [who] handles things." Counsel said Cantrell tried to put the case on calendar "and was told that she had to go to probation." He added, "the only thing that she didn't do that maybe she could have done was contact our office, but unfortunately Ms. Cantrell didn't believe we were still sort of on this to assist her," noting, "I am also aware that sometimes it's very hard to find your actual public defender as well." Counsel concluded, "[I]n any event . . . she's a sick woman with multiple sclerosis." He noted she had reported every month, stayed out of trouble, and "changed as a person because of her diagnosis." The district attorney said he did not have anything to say on behalf of the People.

The court stated, "Quite frankly, given the history with the defendant, I find her testimony unbelievable." The court said, "I was very clear in my court order one of the conditions of probation is that she obey my court order. I find it simply unbelievable that after having gone through that, that if indeed

there was some paperwork snafu, that she would think it simply appropriate to sit at home and do nothing, rather than come back to court as she did before and ask for some form of modification. I think that she was absolutely medically capable of doing light duty community service. It was very clear that she was supposed to do that and when she was supposed to do that, and she simply chose not to.” The court continued, “Did she maybe have some conversations with people? Perhaps. But based on those conversations, if indeed they occurred, it was on her to come to court and get a minute order.” The court concluded, “What she couldn’t do is simply ignore my court order, which is what she did. And so I do find her in violation of her probation in this case based on her disobedience of my court order.”

Defense counsel told the court Cantrell wanted to say something. Cantrell said, “While I didn’t speak to the probation officer, I spoke with his secretary. She told me, okay, come to court.” Cantrell repeated that when she came to court, “they said . . . it’s a felony case. You have to . . . go through probation.” Cantrell continued, “They didn’t give me the option. I didn’t know that I had the option to come speak with my attorney. . . . I didn’t know anything about that, and I apologize.” Cantrell said if she got ready to walk to the store, she would fall to the floor. She said, “[T]his disease . . . has taken over me mentally and physically.”

The court stated, “Let me interrupt.” Cantrell said, “I just wanted to apologize. That’s—that’s it, and that’s all.” The court responded, “And Ms. Cantrell, again, I don’t in any way question your medical diagnosis. The issue is that when you are granted probation by the court, and the court looks you in the eye and orders you to do certain things, and in this case, made all the

accommodations that you asked for and looked you in the face and said you have to do these things and you have to do them by a certain date, it's your obligation as a probationer to get that done. And if there's some impediment to that, then it's incumbent upon you to come in—you can't just sit at home and not take care of those obligations for years and then come in and say, oh, there was a paperwork snafu. It just doesn't work that way. You are ordered to do things, you are obligated to do them, and if you don't, then I'm not going to leave you on probation, because it just becomes a cycle of me telling people to do something and them not doing it, and me telling them to do it again, and it—that—we just can't function that way.” The court then executed the three-year suspended sentence.

DISCUSSION

“Sentencing choices such as the one at issue here, whether to reinstate probation or sentence a defendant to prison, are reviewed for abuse of discretion.” (*People v. Downey* (2000) 82 Cal.App.4th 899, 909 (*Downey*).) “Although [the court’s] discretion is very broad, the court may not act arbitrarily or capriciously; its determination must be based upon the facts before it.” (*People v. Buford* (1974) 42 Cal.App.3d 975, 985.) “[A]ll exercises of legal discretion must be grounded in reasoned judgment and guided by legal principles and policies appropriate to the particular matter at issue.” (*People v. Russel* (1968) 69 Cal.2d 187, 195.) Probation revocation decisions and sentencing decisions “should be the result of sound, deliberate judicial discretion.” (*People v. Alexander* (1977) 74 Cal.App.3d 20, 26.) While the facts supporting revocation need be proved only by a preponderance of the evidence, “the evidence must support a conclusion the probationer’s conduct constituted a willful

violation of the terms and conditions of probation.” (*People v. Galvan* (2007) 155 Cal.App.4th 978, 982.)

As noted, here, Cantrell—who had no significant criminal record before pleading to the charge in this case—reported consistently as directed for nearly three years, suffered no new arrests much less convictions while on probation, met twice as instructed with the probation department’s financial evaluator, and made payments to the probation department. After Cantrell was diagnosed with multiple sclerosis, her probation officer recommended that the community labor requirement be deleted. When the court instead converted the community labor to community service, Cantrell tried to do that community service at the thrift store but was unable to continue because of her multiple sclerosis. While Cantrell should not have lost her first referral form, her probation officer conceded that the second form probation gave her was “different” from the first and he could not recall if it specified light duty. Cantrell’s testimony that the community service office refused to permit her to do light duty because the referral form did not say that was uncontroverted. Cantrell’s testimony about her injections and its side effects, and about the symptoms she suffers from the disease itself, also was uncontroverted. The court had before it nearly 100 pages of Cantrell’s medical records.⁵ In its ruling, the court stated, “I think that she was absolutely medically capable of doing light duty community service,” but the court did not refer to anything in the medical records or otherwise explain the basis for this

⁵ Neither Cantrell’s appellate counsel nor the Attorney General has asked the superior court to forward the exhibits to us, so we have not been able to review the medical records.

finding. The court said, “given the history with the defendant,” it “[found] her testimony unbelievable.” The court did not say what it believed Cantrell to be lying about: the symptoms of her disease, the injections and their side effects, what the community service office told her, what the probation officer’s assistant told her, or what someone at a courthouse window told her.

Nothing in the record suggests the district attorney’s office, on behalf of the People, ever asked that Cantrell be found in violation of probation and given the three years. As noted, Cantrell’s probation officer first recommended the community labor be deleted; he later recommended—after the court put Cantrell in jail—that she be reinstated on probation with credit for time served in lieu of the community service.⁶ Cantrell’s attorney also asked the court to convert Cantrell’s community service to jail time but not to execute the three years. From the record, it appears to have been uncontroverted that the community service office told Cantrell to go to probation to get “light duty” paperwork, probation told her to go to court and “speak with the judge,” and court personnel at the courthouse told her she could not “walk in” because her conviction was a felony. The court seems to have concluded that Cantrell should have gone to the probation department and demanded to see someone who could give her the right paperwork or schedule a set-on with the court or, failing that, to have gone to the public defender’s office to ask a lawyer to intervene with probation or the court. Cantrell’s eventual resignation and inaction—on the

⁶ We acknowledge the court is not required to follow the recommendations of the probation department. (*Downey, supra*, 82 Cal.App.4th at p. 910.)

uncontroverted and unusual facts here—does not rise to the level of a willful violation of her probation terms.

DISPOSITION

The order finding Cantrell in violation of probation and executing the three-year suspended sentence is reversed. We order probation to remain terminated and the Los Angeles County Sheriff's Department to release Cantrell forthwith. We discharge Cantrell from any further obligations to the probation department or the superior court.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EGERTON, J.

We concur:

EDMON, P. J.

LAVIN, J.