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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

DILLON THOMAS NOOR,

Defendant and Appellant.

B269159

(Los Angeles County  
Super. Ct. No. VA138632)

APPEAL from a judgment of the Superior Court of Los Angeles County, Michael A. Cowell, Judge. Reversed.

Katja Grosch, 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 Analee J. Brodie, Deputy Attorneys General, for Plaintiff and Respondent.

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Dillon Thomas Noor appeals from the judgment revoking probation and requests that this Court reinstate his probation and correct the April 16, 2015 minute order to reflect that he is not required to register as a narcotics offender. Because the trial court abused its discretion in refusing to reinstate probation, we reverse the judgment. As the People concede, we order the trial court to correct the April 16, 2015 minute order to reflect that Noor is not required to register as a narcotics offender.

#### BACKGROUND

A March 19, 2015 felony complaint charged Noor with second degree robbery (Pen. Code, § 211); when trying to flee a store with concealed stolen merchandise, Noor struck the loss prevention employee in the face and knocked him down. On April 1, 2015, Noor entered a no contest plea to the robbery charge.

At the April 16, 2015 probation/sentencing hearing, the deputy district attorney referred to Noor's prior arrest to give background to the court. The deputy district attorney stated that, on October 25, 2014, Noor was arrested when he "began shoving a store clerk around while another person stole items from the store." The deputy district attorney then went on to state that "five months later, he goes out and he does virtually the same thing, only this time acting alone."

The Honorable Peter Espinoza suspended imposition of sentence and ordered Noor to serve 120 days in county jail, followed by six months in a residential treatment program, with Noor to be supervised for three years of formal probation.

The trial court imposed various conditions of probation, prohibiting Noor from using drugs or associating with drug users or sellers and from holding a medical marijuana card for three

years, from using or possessing dangerous or deadly weapons, and from entering the business where the robbery occurred.<sup>1</sup> The trial court also ordered Noor to submit to periodic urinalysis tests and to submit to searches of his person and property by law enforcement or his probation officer. The trial court stated twice that Noor was “to obey all laws and all orders of the court and rules and regulations of the probation department.”

After he completed his 120 days in county jail, Noor enrolled in a residential treatment program, First To Serve Rehabilitation Center. Via letter dated May 12, 2015 and forwarded to the court via facsimile on the same day, Anthony Melillo, Director of Operations of the transportation provider, AIR Alternatives, notified the court that, on the previous day of May 11, Noor walked away from the treatment center as soon as the AIR Alternatives driver pulled away. Noor appeared with counsel on May 12 and explained to the court that he had been assaulted. The Honorable Michael A. Cowell ordered Noor to enroll in another residential treatment program and report to the probation department within 48 hours. The court did not find that Noor had violated probation.

When, on June 26, 2015, a deputy district attorney informed the court that Noor had failed to enroll, as ordered, in another program, the court set a probation violation hearing and issued a bench warrant.

At the next hearing, conducted on July 7, Noor provided proof that he had enrolled in the House of Jeremiah (House), a program of Prison Ministry of America. Judge Cowell quashed the bench warrant and admonished Noor to comply with all the

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<sup>1</sup> A Rite Aid at 7859 Firestone Boulevard in Downey.

conditions of probation and of the program. The court did not make a finding that Noor had violated probation.

Noor entered the rehabilitation program at House. Within a few months, House's administrator, Edward Ingram, notified the court that Noor had violated House rules.<sup>2</sup> On October 7, Judge Cowell conducted an initial hearing on Noor's probation violation. Ingram told the court that he wanted to keep Noor in the program, because Noor was making steady progress. Ingram further stated: "He's accepted responsibility, and that's something he hasn't done before he got here. So if we remove him from the program, he's going to revert right back to where he was. We would like to keep him, because we truly believe that we see a break in him."

Judge Cowell stated that he agreed with administrator Ingram that Noor is beginning to recognize his issues and correct his behavior and, as to Noor's having tested negative on 13 drug screens, commented, "That's wonderful." The court also acknowledged that House had disciplined Noor by terminating his job and giving him "disciplinary steps." The court further noted that it had not previously ruled that Noor had violated probation.

The court also stated that he had warned Noor previously that he was "on a very, very thin edge," but Noor "didn't get the point." The court stated that it found probable cause to conclude that Noor had violated probation and intended to order that Noor be remanded. Noor's counsel then reiterated that House had already resolved the discipline issue against Noor. After further

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<sup>2</sup> Edward Ingram's written notification is not in the record before us.

colloquy, during which counsel asked whether the court was “already of a mindset that you’re going to find him in violation and send him for two years,” the court put the matter over and ordered a supplemental probation report.

The Probation Officer’s Report, filed October 22, 2015, recommends that Noor be found in violation of probation but that probation be reinstated.<sup>3</sup>

On December 3, 2015, Judge Cowell conducted the violation of probation hearing. Defense counsel began by stating, “I think we’re prepared to admit that he violated the house rules that he was under at the time.”

House administrator Ingram testified that Noor had violated House of Jeremiah rules by visiting his girlfriend instead of going to work. Noor also violated the rules by making unauthorized calls to family and friends. Further, Noor breached additional, minor rules, such as failing to do his chores on time and failing to do his laundry on the proper day. In addition, Noor was argumentative. Ingram gave an example, stating that Noor and he “argued over milk because he didn’t think he had enough milk. And the right kind of milk and the right temperature. It was like dealing with a three-year old.”

Ingram stated that House staff does not expect residents “to be perfect at all. So we expect them to make mistakes. And this isn’t something that we would have—that we would have sent him back to custody for. This is something that we would have dealt with in-house, actually.”

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<sup>3</sup> We reviewed the probation officer’s report, which was filed under seal.

Ingram went on to testify that recently Noor had started to make chartable progress and had begun listening and paying attention. Ingram acknowledged that Noor did not fail any drug or alcohol tests and predicted that Noor would make progress if allowed to continue at House.

After Ingram testified, the court reiterated comments it had made to Noor on July 7, when the court had been notified that Noor had failed to enroll in any program and had, in fact, been dropped from the waiting list at Positive Steps. The court emphasized the previous attempt to impress upon Noor his responsibility to comply with all the requirements of the rehabilitation program or face two years in prison.<sup>4</sup> The court read into the record the admonishment to Noor at the July 7 hearing: “This is the chance I am giving you. But if you screw up, if you leave without permission, if you have a dirty test or a missed appointment with the probation officer, you are looking at a two-year state prison sentence. I want to make that clear here and now. Two years in prison, not the county jail, in prison, because it’s a robbery charge.” The court continued to read its July 7 comments into the record: “And I want to be sure that you understand the extent to which you comply with the terms and conditions of probation and rules and regulations of the program is all that stands between you and that two-year sentence.” The court explained that, at the July 7 hearing, it “took a lot of time with Mr. Noor precisely because he is young and immature and needed to come to grips with this. And I explained it to him as clearly as I knew how. So what then he does in the program, the

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<sup>4</sup> The reporter’s transcript of the July 7 hearing is not part of the record before us.

violation of house rules, however inconsequential they may seem, are violations of probation.”

The court revoked probation and sentenced Noor to prison for two years with credit of 335 days, based on his having been in custody 291 days.

## DISCUSSION

### I

Noor contends that the trial court prejudicially erred by revoking his probation. We agree.

“[C]ourts deem probation an act of clemency in lieu of punishment [citation], and its primary purpose is rehabilitative in nature.” (*People v. Howard* (1997) 16 Cal.4th 1081, 1092.)

A court may revoke probation “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 [probation] . . . .” (Pen. Code, § 1203.2, subd. (a).) Trial courts have very broad discretion. (*People v. Rodriguez* (1990) 51 Cal.3d 437, 443.) It is the probationer’s burden to demonstrate that the court abused its discretion. (*People v. Urke* (2011) 197 Cal.App.4th 766, 773.)

Noor claims that the court’s refusal to reinstate probation was made without due consideration of the circumstances of Noor’s probation violation, because it had prejudged Noor. Noor points to Judge Cowell’s comment at the October 7 hearing that he would not have granted probation: “I don’t say this lightly. I don’t think I would have granted him probation in the first place, but that wasn’t my call. Some other judge did. And I gave him the benefit of saying I won’t find you in violation at this juncture [in July 2015], because of the confusion, but made it clear that he

was on a very, very thin edge from that point on.” Noor also focuses on Judge Cowell’s additional October 7 remarks regarding the setting of the evidentiary hearing: “We can set this over for a hearing in two weeks or he can admit the violation. Either way, if he’s found in violation he’s looking at a two-year sentence.” Noor infers that the trial court’s decision in the instant matter was a “reflexive action, based on the fact of any violation by appellant, no matter how minor.”

To the contrary, Judge Cowell gave Noor due consideration of the circumstance of his probation violation. At the October 7, 2015 hearing, Judge Cowell commended Noor for 13 negative drug screens, characterizing the test results as “wonderful.” Although he first signaled his intent to find that Noor had violated probation, Judge Cowell did not revoke probation at that hearing, but set an evidentiary hearing and ordered a probation report.

Judge Cowell’s December 3 remarks belie Noor’s characterization. At the hearing, Judge Cowell clarified that Noor had not admitted the violation and proceeded to conduct a full evidentiary hearing, with testimony and argument by counsel. The judge, who had read and considered the probation report, also heard and considered the testimony of Ingram, the administrator of the House of Jeremiah.

However, the trial court abused its discretion in revoking probation and imposing a prison sentence for violation of House of Jeremiah rules. When Judge Cowell admonished Noor at the July hearing, the judge cautioned him about serious misbehavior, warning him that “if you leave the program without permission, if you have a dirty test or a missed appointment with the probation officer, you are looking at a two-year state prison



sentence.” Noor did not do any of these things. He did not have a positive drug test; he did not leave his placement; and he did not miss an appointment with his probation officer. Instead, he missed one day of work, saw his girlfriend, made telephone calls, did not get up at the right time, did his laundry on the wrong day, and argued with staff. There is nothing in the record to show that Noor violated actual conditions of probation; nothing to show that any of the people he called or the person he saw (his girlfriend) is a drug user or seller. (Cf. *People v. Downey* (2000) 82 Cal.App.4th 899, 910 [no abuse of discretion in revoking probation where probationer used drugs during the probation period]; cf. *People v. Urke, supra*, 197 Cal.App.4th 766, 769 [probation properly revoked after fourth violation of condition of probation barring sex offender from being in the presence of minors].)

Noor’s breaking of House of Jeremiah rules in no way demonstrates that he poses a risk to the public and should thus be imprisoned, rather than reinstated on probation. “The safety of the public . . . shall be a primary goal through the enforcement of court-ordered conditions of probation . . . .” (Pen. Code, § 1202.7.) ““Probation is generally reserved for convicted criminals whose conditional release into society poses minimal risk to public safety and promotes rehabilitation.”” (*People v. Minor* (2010) 189 Cal.App.4th 1, 9-10.) While at House of Jeremiah, Noor has done nothing to demonstrate that he poses a risk to the public. Moreover, the record shows that he is on the correct path to rehabilitation: Noor has had 13 clean drug tests; administrator Ingram has noted his chartable progress; and the probation officer recommended reinstatement of probation.

## II

As the People concede, Noor is not required to register as a narcotics offender. (Health & Saf. Code, § 11590.) At the April 16, 2015, hearing, the trial court stated that Noor need not register as a narcotics offender because his conviction of second degree robbery under Penal Code section 211 was not a narcotics offense. The minute order mistakenly reflects that Noor was ordered to “register as a convicted narcotics offender.” Accordingly, we order the court to correct the April 16, 2015 minute order to reflect the court’s oral pronouncement of judgment to delete the requirement that Noor register as a narcotics offender.

## DISPOSITION

We direct the superior court to correct the April 16, 2015 minute order to reflect the trial court’s oral pronouncement of judgment to delete the requirement that appellant register as a narcotics offender.

We reverse the judgment and order the superior court to reinstate probation on the same conditions previously imposed.

NOT TO BE PUBLISHED.

CHANNEY, Acting P. J.

We concur:

JOHNSON, J.

LUI, J.