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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.

ANNAMARIE EILEEN VALDEZ,

Defendant and Appellant.

B234569

(Los Angeles County
Super. Ct. No. KA087058)

APPEAL from a judgment of the Superior Court of Los Angeles County. Daniel S. Lopez, Judge. Affirmed.

California Appellate Project, under appointment by the Court of Appeal, Jonathan B. Steiner, Executive Director, and Richard B. Lennon for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Linda C. Johnson, Supervising Deputy Attorney General, and Elaine F. Tumonis, Deputy Attorney General, for Plaintiff and Respondent.

Defendant Annamarie Eileen Valdez appeals from the judgment entered after the trial court terminated her Proposition 36 probation and sentenced her to prison following her guilty plea to possession of methamphetamine and psilocybin and being under the influence of a controlled substance. Defendant contends the trial court abused its discretion by refusing to grant her probation. We affirm.

BACKGROUND

On June 2, 2009, defendant was charged with possession of methamphetamine and psilocybin and being under the influence of a controlled substance, with allegations she had three prior felony convictions and had served three prison terms. On June 9, 2009, defendant pleaded guilty to all three counts and admitted the prior conviction and prison term allegations in exchange for 36 months of probation under the terms of Proposition 36. The conditions of defendant's probation included completing a substance abuse treatment program, registering as a narcotics offender, and obeying all orders of the court, probation officer, and treatment provider. The court's orders included paying supervision, lab, and restitution fees through the probation department.

Defendant visited a Community Assessment Service Center (CASC) and appeared in court for progress reports on July 21 and September 9, 2009. She was ordered to appear in court on November 16, 2009, but did not do so. The trial court summarily revoked her probation, terminated her Proposition 36 program, and issued a bench warrant. She appeared in court on February 24, 2010, and explained that she had been in custody in Orange County for a second degree burglary. The court determined that her probation violation was not willful and reinstated her Proposition 36 probation. It ordered her to return to court on March 30, 2010, for a progress report. Defendant did not appear on March 30, 2010, and her attorney reported that he had not had any contact with her. The court again revoked defendant's probation, terminated her Proposition 36 program, and issued a no-bail bench warrant for her arrest.

On May 27, 2011, defendant was arrested on the bench warrant and appeared in court. The court ordered a supplemental probation report and continued the matter for a contested revocation hearing, which was conduct on July 13, 2011.

At the probation revocation hearing, defendant's probation officer, Felicia Williams, testified that defendant had not made any progress on satisfying the terms of her probation. She had not completed a Proposition 36 treatment program, registered as a narcotics offender, or paid anything toward the fines and fees imposed by the court. She had reported to probation only three times at the start of her probation. Thereafter, the probation department had sent defendant letters "requesting her appearance or voluntary turn in," but defendant did not contact the probation department. Instead, she was twice arrested on bench warrants. Defendant had gone to a CASC in July of 2009, but the probation department had no record of her contacting a CASC again after her probation was reinstated. Williams testified that if defendant had reported to a CASC, notice would have been given to the probation department.

Defendant testified at the revocation hearing that she was arrested in Orange County and released on bail before she was arrested in this case. After she was placed on Proposition 36 probation, she "enrolled in spirit" and was reporting with her "kiosk card and going to [her] classes" until she was rearrested on the Orange County case. She served five months on the Orange County case and was then brought to court in Los Angeles for this case. After her probation was reinstated, she reported to a CASC, where she was put on a waiting list and given a paper to show the court. She went to court sometime in March of 2010, but there was a bomb threat and she just went home. She returned to the courthouse the next day, but the court was closed. She did not return to court thereafter, due to an "[e]rror in judgment." She claimed she had reported to probation at the kiosk sometime in 2010 and was informed she needed to see someone, but "[i]t was five to five," so she left. She admitted she had "done nothing since" March of 2010.

The trial court found defendant in violation of her probation and declined to reinstate her on Proposition 36 probation or grant her probation outside of Proposition 36. The court explained, “Unfortunately, I have no information that you have cooperated in any way, shape or form in your efforts to complete Prop 36. So the court does find that by virtue of the last time reporting in March 2010, and failing to enroll, participate and complete the Prop 36 program, the court finds that you are no longer eligible for Prop 36 pursuant to *People versus Guzman* [(2003) 109 Cal.App.4th 341, 350], and Prop 36 is no longer available to you on that basis.” Defense counsel asked the court to impose “something short of a prison sentence,” but the court declined, explaining, “I’m finding her unamenable to treatment based on just the length of time. She just basically ignored all efforts to receive help from March 2010. I will accept the fact that in March 2010 some effort was made, but here we are over a year later. . . . No efforts were made over a year period. [¶] So the court finds you no longer amenable for treatment under the Prop 36 on that basis.” The court sentenced defendant to two years in prison.

DISCUSSION

Defendant does not contest any of the trial court’s findings, including its finding that she was “unamenable” to drug treatment. She concedes that “while she made some initial efforts, she essentially failed to avail herself of the services offered her under Proposition 36,” and she apparently does not contest the trial court’s decision to terminate her Proposition 36 probation. She nonetheless contends that the court abused its discretion by refusing to place her on ordinary probation because she had not committed any new offenses, had no history of violence, and “was the perfect candidate for a grant of probation with drug treatment imposed as a condition thereof.”

“Probation is an act of leniency, not a matter of right.” (*People v. Walmsley* (1985) 168 Cal.App.3d 636, 638.) The grant or denial of probation rests within the trial court’s discretion and will not be disturbed on appeal except upon a showing that the trial court acted arbitrarily or capriciously. (*People v. Sizemore* (2009) 175 Cal.App.4th 864, 879.) Defendant bears a heavy burden when attempting to show an abuse of that

discretion. (*People v. Aubrey* (1998) 65 Cal.App.4th 279, 282.) Absent a clear showing that a sentencing decision was arbitrary or irrational, a trial court is presumed to have acted to achieve legitimate sentencing objectives. (*People v. Ferguson* (2011) 194 Cal.App.4th 1070, 1091.)

Defendant has not met her burden of showing that the trial court's decision to deny probation was arbitrary, capricious, or irrational. Several factors set forth in California Rules of Court, rule 4.414(b), are relevant here and support the trial court's decision to sentence defendant to prison. Defendant had a significant criminal record in addition to her three convictions in this case. (Cal. Rules of Court, rule 4.414(b)(1).) She had been convicted of violating Penal Code section 476 (forgery) in 2002 and served a prison term. In 2003 she suffered her second forgery conviction—a violation of Penal Code section 470, subdivision (d)—and served another prison term. In 2005 she was convicted of violating Health and Safety Code section 11378 and served another prison term. Notwithstanding the time she spent in prison, defendant committed four new offenses in 2009: the three in this case and the second degree burglary in Orange County. She was convicted of the burglary in December of 2009 and, according to the supplemental probation report, placed on formal probation. (Defendant testified she served five months for that burglary.) Defendant admits she performed poorly on the Proposition 36 probation initially granted in this case and she does not challenge the trial court's finding that she was "unamenable" to drug treatment (Cal. Rules of Court, rule 4.414(b)(2)–(4)), yet she argues on appeal that the trial court abused its discretion by failing to put her on probation with a drug treatment condition. The court had already given defendant a second opportunity and 15 months to enroll in a drug treatment program, yet she had not done so and offered no explanation for failing to do so. In addition, she never voluntarily reported to her probation officer or the court after she was reinstated on Proposition 36 probation on February 24, 2010. She appeared in court on May 27, 2011, only because she had been arrested on a bench warrant. For this, her only explanation was that she had poor judgment. Defendant's conduct and her testimony at

the revocation hearing provided the trial court with no basis for believing that she would comply with the conditions of a new grant of probation. Accordingly, the trial court did not abuse its discretion by sentencing defendant to prison.

DISPOSITION

The judgment is affirmed.

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MALLANO, P. J.

We concur:

ROTHSCHILD, J.

CHANEY, J.