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IN THE COURT OF APPEAL OF THE STATE OF  
CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

OTIS LEE WILLIAMS,

Defendant and Appellant.

B271810

(Los Angeles County  
Super. Ct. No.  
6PH00962)

APPEAL from a judgment of the Superior Court of Los Angeles County, Jacqueline Lewis, Judge. Affirmed.

Heather E. Shallenberger, 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, Senior Assistant Attorney General, Victoria B. Wilson, Supervising Deputy Attorney General, Chung L. Mar, Deputy Attorney General, for Plaintiff and Respondent.

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Defendant and appellant Otis Lee Williams appeals from the trial court's order revoking his parole. The court reinstated parole on the condition defendant serve 180 days in county jail. Defendant contends the court abused its discretion in finding that he violated the terms of his parole, because his failure to participate in required outpatient sex offender treatment was not willful.

We affirm the order.

## **FACTS AND PROCEDURAL HISTORY**

On June 1, 2011, defendant was convicted of grand theft person (Pen. Code, § 487, subd. (c)),<sup>1</sup> and sentenced to 32 months in state prison. He was released on parole on June 26, 2013, with supervision set to expire on September 23, 2016. Parole conditions required defendant to enroll in

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<sup>1</sup> All statutory references are to the Penal Code unless otherwise specified.

and actively participate in a sex offender treatment program.<sup>2</sup>

On February 5, 2016, the Department of Corrections and Rehabilitation filed a petition for revocation of defendant's parole. The petition alleged defendant had failed to actively participate in outpatient sex offender treatment.

A contested revocation hearing was held on March 15, 2016, in which the following evidence was presented:

Parole Agent Megan Hasz testified that she had been supervising defendant for approximately three to four months at the time the petition for revocation was filed. In a containment meeting with defendant on January 21, 2016, Agent Hasz addressed defendant's "continued issues of not participating in and falling asleep during his sex offender outpatient treatment." At the meeting, Agent Hasz and defendant discussed how he planned to increase his participation and remain alert during his treatment. Agent Hasz advised defendant that if he continued to violate this condition of his parole he would be taken into custody. On the day Agent Hasz arrested defendant, he had medications in his possession. Defendant had not previously mentioned he was taking medication.

Dr. Elizabeth De La Pena testified that she provided therapy to defendant as a staff clinician in the Sharper

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<sup>2</sup> Defendant had a prior conviction for lewd or lascivious acts with a child (§ 288), which formed the basis for this parole condition.

Future Program. Dr. De La Pena began working with defendant's sex offender treatment group in October 2015. Defendant had problems with participation in therapy throughout the time that she worked with him, including "[n]o verbal participation, falling asleep, and continuously closing his eyes during group treatment." Dr. De La Pena tried to remedy the situation on several occasions. They had "[m]ultiple meetings where expectations[s] [were] set in terms of what participation looked like with specific examples. [Defendant] signed a behavioral contract. There was a containment meeting with [Dr. De La Pena] and his parole agent." On January 30, 2016, Dr. De La Pena excused defendant from the treatment group for sleeping. She had "redirected" defendant once, but he continued to close his eyes and fall asleep. When she excused defendant, he stood up and began arguing that he was not falling asleep. Defendant called Dr. De La Pena a "bitch" three times as he left the room.

Dr. De La Pena asked defendant if he was taking medication related to his mental health when she first began working with him. She asked again around the time that he was excused from the treatment group. Both times, defendant specifically informed Dr. De La Pena that he was not taking any medication. When they discussed why he was falling asleep, he said that he was tired from work. They reviewed his work schedule, but none of the nights he worked directly preceded the group meetings. Dr. De La Pena suggested that it could be beneficial to switch to

another treatment group, but defendant assured her that he would not sleep during treatment in the future. Defendant never told Dr. De La Pena that his medication was making him drowsy.

Defendant testified that he was taking “psych. meds.” and medication for hypertension. He fell asleep in treatment because his medications made him drowsy. His blood pressure medication had been changed in January, and he had not been aware that it would make him sleepy. Defendant had his medications with him when he was arrested.

The parties stipulated that three of the medications in defendant’s possession at the time of his arrest—one used to treat hypertension and two used for treatment of mental health disorders—may have drowsiness as a side effect.

The court ruled that defendant had violated parole, explaining:

“You know, that [defendant fell asleep because his medication made him drowsy] would be a much better excuse had he not proceeded to call the doctor a bitch three times on the way out.

“You know, the Court’s really looking at the -- weighing the credibility here of that testimony, including, you know, assuming that the doctor specifically asked him if he was taking any meds. He said no. Never told the parole agent that he was taking any meds. [Defendant] [p]roceeded to, not only be drowsy in class, but not participate as he was supposed to.

“And I’ll note why the Court thinks that’s particularly important here: you know, looking at his previous violations -- October, 2013, was access to pornography. And then in November of 2014, failure to attend parole outpatient clinic.

“February of 2015, again, access to pornography. January, 2016, failure to participate in outpatient sex offender treatment.

“So this has been an ongoing issue, and clearly, to me, there is a correlation between his failure to do the counseling he’s supposed to do and his continued violations having to do with his [section] 290 status.

“And so today all of a sudden now we have some defense that he was taking medications and that those caused him to be drowsy. And I find that, frankly, to be pretty difficult to believe when I see what his reaction was especially to the doctor the day he was dismissed.

“The Court finds by a preponderance of the evidence based on the credibility of the witnesses that [defendant] has violated the terms and conditions of parole supervision by failing to participate in outpatient sex offender treatment.”

## **PAROLE REVOCATION PROCEDURE**

“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.” (*Williams v. Superior Court* (2014) 230 Cal.App.4th 636, 652 (*Williams*); see § 3000.08, subd. (f).) Whether to revoke parole lies within the trial court’s discretion. (*People v. Galvan* (2007) 155 Cal.App.4th 978, 981–982 (*Galvan*)[revocation of probation].) “Parole and probation revocation hearings are equivalent in terms of the requirements of due process. [Citations.]” (*People v. Rodriguez* (1990) 51 Cal.3d 437, 441.) For either type of violation, the facts supporting a revocation hearing must be proved by a preponderance of the evidence. (*Ibid.*; see § 3044, subd. (a)(5).) A parole violation must be willful to justify revocation. (*People v. Rodriguez* (2013) 222 Cal.App.4th 578, 594 [probation revocation]; *People v. Cervantes* (2009) 175 Cal.App.4th 291, 295 [same]; *Galvan, supra*, 155 Cal.App.4th at p. 982 [same].) In criminal law, willfulness requires “‘simply a purpose or willingness to commit the act . . . ,’ without regard to motive, intent to injure, or knowledge of the act’s prohibited character. [Citation.] The term[ ] impl[ies] that the person knows what he is doing, intends to do what he is doing, and is a free agent. [Citation.] Stated another way, the term ‘willful’ requires only that the prohibited act occur intentionally. [Citations.]” (*In re Jerry R.* (1994) 29 Cal.App.4th 1432, 1438.)

## DISCUSSION

We reject defendant's contention that the trial court abused its discretion in its decision to revoke parole. Although defendant attempts to cast the issue as a question of whether or not he willfully fell asleep during group treatment sessions, evidence was presented that he did not participate in treatment beyond bare attendance, despite many meetings with Dr. De La Pena in which they discussed how he was expected to participate with specific examples of appropriate participation, as well as a containment meeting with both Dr. De La Pena and Agent Hasz in which he was advised of the ramifications of failing to comply. Defendant does not argue that he actively participated in the treatment group, and presented no evidence to that effect at the contested hearing. His sole contention is that he did not intentionally sleep during treatment sessions. His parole conditions required active participation, not simply presence. The evidence shows that defendant failed to take an active role in his treatment in violation of his parole conditions, notwithstanding Dr. De La Pena's express direction and the admonitions of his parole agent.

Additionally, the evidence supports the trial court's finding that defendant's explanation for his failure to remain awake was not credible. When confronted with the problem, defendant blamed his work schedule for his drowsiness. A review of his schedule revealed that he had never worked on a night before a treatment session. Even in the absence of



any indication that his work schedule had affected defendant's participation, Dr. De La Pena suggested that changing the time of his sessions could be beneficial and offered defendant the opportunity to reschedule to help alleviate the problem. Although he understood the importance of actively participating in therapy, defendant declined, stating that he would stay awake in the future. Dr. De La Pena asked whether defendant was taking mental health medications on two occasions, but rather than discussing his medications and any side effects he may be suffering, defendant denied taking any medication. Finally, when Dr. De La Pena excused defendant from therapy, he did not protest on the basis that his failure to stay awake was beyond his control. He exited the room using profane language to personally insult the doctor. These were not the actions of a man working to comply with the conditions of his parole. To the contrary, defendant's behavior suggests that he was uncommitted, willfully disengaged, and insincere in his promises to abide by the terms and conditions of his parole. That this was defendant's fourth parole violation related to his sex offender status further strengthens the conclusion that he was not being truthful about the cause of his inattention and disengagement in treatment sessions. His previous violations for failure to attend an outpatient clinic and two instances of accessing pornography indicated a pattern of noncompliance, further undermining his

credibility.<sup>3</sup> In light of the facts presented, the court did not abuse its discretion.

## **DISPOSITION**

The trial court's order of March 15, 2016, is affirmed.

KRIEGLER, J.

We concur:

TUNER, P.J.

KIN, J.\*

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<sup>3</sup> Defendant had suffered a total of five prior parole violations total, including a curfew violation and violation for failure to charge his GPS device.

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