

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

THE PEOPLE,

Plaintiff and Respondent,

v.

JAIME D. HOLLIE,

Defendant and Appellant.

B266839

(Los Angeles County  
Super. Ct. No. BA432826)

APPEAL from a judgment of the Superior Court of Los Angeles County.

Michael D. Abzug, Judge. Affirmed.

Heather L. Beugen, 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, Jonathan M. Krauss and Nathan Guttman, Deputy Attorneys General, for Plaintiff and Respondent.

---

A jury found defendant Jaime D. Hollie guilty of inflicting corporal injury on a girlfriend (Pen. Code, § 273.5, subd. (a); count 1) and assault by means likely to produce great bodily injury (§ 245, subd. (a)(4); count 2). The jury also found true that defendant used a deadly or dangerous weapon in connection with the assault conviction (§ 12022, subd. (b)(1)), and that he inflicted great bodily injury as to both counts (§ 12022.7, subds. (a) and (e)). The trial court dismissed the weapon enhancement under section 1385, denied probation, and sentenced defendant to a term of five years in prison, consisting of the low terms for both offenses (count 2 was stayed under § 654), and a great bodily injury enhancement of three years. Defendant appeals, contending that the trial court did not properly exercise its discretion when it denied him probation. We affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

Defendant and Alicia Pratt started dating in 2000. On December 5, 2014, Ms. Pratt drank some vodka and then went to defendant's home. They argued in his driveway. Defendant told Ms. Pratt to leave, but she refused. Ms. Pratt did not hit defendant, or insult him. However, defendant hit Ms. Pratt at least three times on her head with his plastic walking cane. She did not remember what happened after that.

Los Angeles Police Officer Juan Laguna and his partner responded to a domestic violence call on December 5, 2014, at 2:35 p.m. Defendant was walking away, and Ms. Pratt laid in the driveway. She was covered in blood and was passing in and out of consciousness. Officer Laguna attempted to find defendant, but was unable to. Police announced on a loud speaker that they were going to use a dog to search for defendant. As they prepared to search defendant's home, defendant walked out of his front door. He had a red dot that appeared to be blood on his chest, but did not have any injuries. Inside, police found a broken cane spattered with blood.

Ms. Pratt was transported by paramedics to the hospital. She received staples on her head, her eyes and lips were swollen, and she had cuts inside her mouth.

## **DISCUSSION**

Defendant contends the trial court abused its discretion by denying probation. He argues that the trial court either did not understand its discretion to find this case to be an “unusual case” under California Rules of Court, rule 4.413, or that it failed to consider relevant factors in evaluating defendant’s eligibility for probation, such as his age and lack of serious criminal background. Defendant contends that the court’s error amounts to a due process violation. We find no error.

### **I. Relevant Proceedings**

After the jury returned its verdict, and in anticipation of the sentencing hearing, the court expressed its interest in knowing Ms. Pratt’s opinion about defendant’s sentence; the number and type of blows used in the attack; and whether there was any evidence that defendant was intoxicated during the attack.

The probation report indicated that defendant had four drug possession convictions, between 1994 and 2008. He also had Vehicle Code violations (for driving on a suspended license and driving without a license) in 2006, 2008, and 2014. He was on probation for his 2014 case at the time the instant offense was committed. The report noted that defendant was presumptively ineligible for probation under Penal Code section 1203, subdivision (e)(3), because defendant inflicted great bodily injury.

At the June 30, 2015 sentencing hearing, defense counsel asked the court to grant probation. Ms. Pratt told the court that she did not want defendant “locked up” and that she would “rather him go to anger management . . . .” Defendant’s brother also addressed the court, and said he did not want defendant incarcerated because their parents were very old. Defendant told the court that he was the primary caregiver for his 84-year-old father, that he was not a violent person, and that he would obey any terms of his probation.

The court stated that defendant was presumptively ineligible for probation under Penal Code section 1203, subdivision (e) “unless it’s an unusual case.” The court continued: “[S]entencing is the worst part of my job. It’s hard to sit in judgment of another human being. . . . But I have to follow the law. After having thought about it

carefully and listened to [defendant] and listened to the victim and listened to his brother, I have to say that I do not find that this is an unusual case within the meaning of the law.” The court explained that it is “common” and “not unusual” for victims of domestic violence to oppose a prison sentence for their abuser. The court also explained further that it was “not uncommon” for a defendant’s incarceration to have collateral consequences upon family members. The court continued, “I have to look at the court rules, and even if the defendant was eligible, without the presumption against it, it appears to me that I have to deny probation under the Court Rule 4.414(a) and (b).” Specifically, the court found that defendant’s crimes were “of increasing seriousness.” The court also believed that defendant’s remorse was not credible.

In considering aggravating factors in support of its selection of a term of imprisonment under California Rules of Court, rule 4.421, the court found that the crime involved violence and the threat of great bodily harm, and that the victim was vulnerable because of her gender and intoxication. In mitigation, under rule 4.423, the court found that defendant’s criminal record was “relatively insignificant” and did not involve violent crimes. The court also noted that defendant was 60 years old, and that this crime appeared to be an “uncharacteristic outburst of violence.”

The court announced its tentative decision to impose the low terms, plus a consecutive term for the enhancements. However, the sentencing hearing was continued so the parties could brief whether the court had authority under Penal Code section 1385 “to strike the enhancements.”

At the continued hearing, the court revisited defendant’s eligibility for probation. The court had received a letter from defendant’s pastoral advisor, and from defendant. Acknowledging that defendant was remorseful, the court observed that every convicted defendant is remorseful for having been convicted. Defendant did not display any remorse before his conviction, and therefore his remorse was “not persuasive.” The court also found there was no credible explanation for defendant’s unprovoked attack on a vulnerable victim.

Defendant addressed the court, and explained that Ms. Pratt had spat in his face, thrown his car keys on the roof of his house, attempted to strike him with a pot as he tried to walk away from her, and that he “was just trying to be first with the stick” when he hit her. He explained that he was also drunk, and that Ms. Pratt had hit him in the head with a milk crate and frozen hot dogs. He also had apologized to Ms. Pratt after she was released from the hospital. Defendant needed to care for his elderly father, who had been diagnosed with dementia. Also, defendant was handicapped and used a cane or a wheelchair due to a herniated disc in his back. Defendant did not intend to hurt Ms. Pratt but only wanted to stop her from attacking him.

The court explained, “I hear you . . . and I understand you. I hope you understand that I have to consider not only what you say, but everything else about the case, and I have to just do what the law compels me to do.” The court denied probation.

## **II. Analysis**

“Except in unusual cases where the interests of justice would best be served if the person is granted probation, probation shall not be granted to any of the following persons: [¶] . . . [¶] (3) Any person who willfully inflicted great bodily injury or torture in the perpetration of the crime of which he or she has been convicted.” (Pen. Code, § 1203, subd. (e)(3).) Whether a case is an “ ‘unusual’ case” within the meaning of section 1203, subdivision (e) is within the broad discretion of the trial court. (*People v. Bradley* (2012) 208 Cal.App.4th 64, 89.) “ ‘An order denying probation will not be reversed in the absence of a clear abuse of discretion. [Citation.] In reviewing the matter on appeal, a trial court is presumed to have acted to achieve legitimate sentencing objectives in the absence of a clear showing the sentencing decision was irrational or arbitrary.’ ” (*People v. Ferguson* (2011) 194 Cal.App.4th 1070, 1091.)

California Rules of Court, rule 4.413(c) sets forth the facts which may indicate an unusual case in which probation may be granted. These include whether “[t]he defendant participated in the crime under circumstances of great provocation, coercion, or duress not amounting to a defense, and the defendant has no recent record of committing crimes of violence.” (Rule 4.413(c)(2)(A).) The defendant’s age and criminal record are also

relevant factors. (Rule 4.413(c)(2)(C).) There is no requirement that the trial court formally balance aggravating and mitigating factors in deciding whether to grant probation. (*People v. Morado* (1990) 221 Cal.App.3d 890, 894.)

Defendant argues the trial court's comments demonstrate the court wrongly concluded that it lacked discretion to find this case to be an unusual case. Alternatively, defendant contends the court failed to consider defendant's age and lack of significant criminal history in assessing whether this case was unusual, and that the court did not consider the criteria in California Rules of Court, rule 4.413(c) in making its determination.

We do not read the record so narrowly. The record makes clear that the court was aware of defendant's age and criminal history, and considered those factors. Moreover, the court expressly acknowledged that it had authority to grant probation upon finding that this was an unusual case. That the court ultimately determined that defendant was unsuitable for probation does not imply that the court did not exercise its discretion. Defendant has not shown the trial court abused its discretion in finding that this case was not an unusual case within the meaning of Penal Code section 1203, subdivision (e).

### **DISPOSITION**

The judgment is affirmed.

GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

RUBIN, J.