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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

DAMEL DASHAWN JEFFRIES,

Defendant and Appellant.

B279467

(Los Angeles County
Super. Ct. No. BA408412)

APPEAL from order of the Superior Court of Los Angeles County. Craig Richman, Judge. Affirmed.

Stanley Dale Radtke, 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, Senior Assistant Attorney General, Susan Sullivan Pithey, Supervising Deputy Attorney General, and Michael J. Wise, Deputy Attorney General, for Plaintiff and Respondent.

* * * * *

Damel Dashawn Jeffries (defendant) appeals the trial court's order revoking his probation and sentencing him to the six-year prison term previously imposed but suspended in execution. Defendant does not dispute that he violated probation; instead, he argues that the trial court's decision not to reinstate him on probation was arbitrary. We conclude there was no arbitrariness, and affirm.

FACTS AND PROCEDURAL BACKGROUND

In October 2013, defendant pled guilty to a single count of second degree robbery (Pen. Code, § 211)¹ and admitted that he served a prior prison term (§ 667.5, subd. (b)) for his 2011 robbery conviction.² Pursuant to the parties' plea bargain, the trial court imposed a six-year prison term (five years for the robbery and one year for the prior prison term), but suspended execution of that sentence and placed defendant on three years of probation. The court ordered that, while on probation, defendant must "obey all laws, orders of the court, all rules, regulations and instructions of the probation officer."

¹ All further statutory references are to the Penal Code unless otherwise indicated.

² Defendant was also charged with grand theft person (§ 487, subd. (c)), and the People further alleged that he personally used a dangerous or deadly weapon in conjunction with the second degree robbery (§ 12022, subd. (b)(1)); that his 2011 robbery conviction was a "strike" under our Three Strikes law (§§ 667, subds. (b)-(j) & 1170.12, subds. (a)-(d)) as well as a prior serious felony (§ 667, subd. (a)(1)); and that he had two other prior prison terms (§ 667.5, subd. (b)). These additional charges and allegations were dismissed pursuant to the parties' plea bargain.

On March 24, 2016, defendant was admitted to the Harbor Area Substance Abuse Treatment Center (the Center), a co-ed residential program, as part of his probation. In the first three weeks he was at the Center, he twice had “inappropriate sexual conduct with female [patients],” twice disrupted group meetings to answer his cell phone, and had a single physical altercation with a female patient. He had been advised in advance of the Center’s rules and had been counseled about each violation but the last. The Center immediately discharged him after the last incident on April 18, 2016, based on the “accumulation of [his] violations.”

The People charged defendant with violating the terms of his probation, and the trial court held an evidentiary hearing. At the conclusion of the hearing, the court found that defendant was in violation of his probation. In deciding whether to revoke or reinstate probation, the court noted that it had “done everything [it] could possibly do[] to try and help” defendant, but that “he is his own worst enemy.” The court nevertheless gave defense counsel one further opportunity to locate a “rigorous mental health treatment program” for defendant. Defense counsel located one possible program in Acton, California, but that program would not accept defendant because the program was not near a medical facility and thus not safe for defendant, who has a “seizure condition.” Having “exhausted every possibility [it] could think of,” and having given defendant—and watched him “not take[] advantage of”—“every opportunity, after opportunity, after opportunity, after opportunity,” the court revoked probation and imposed the previously suspended six-year prison term.

Defendant filed this timely appeal.

DISCUSSION

Defendant argues that the trial court erred in revoking, rather than reinstating, his probation because the court's decision to revoke is (1) arbitrary, because it is inconsistent with its prior desire to reinstate probation and to place defendant in another mental health facility, and (2) unlawful, because it rests upon circumstances beyond defendant's control (namely, the absence of a nearby hospital).

Once a trial court finds a criminal defendant in violation of probation, the court has "broad discretion in deciding whether to continue or revoke probation." (*People v. Jones* (1990) 224 Cal.App.3d 1309, 1315; *People v. Downey* (2000) 82 Cal.App.4th 899, 909; § 1203.2, subds. (a) & (b)(1).) We review a trial court's decision to revoke rather than reinstate probation for an abuse of discretion. (*People v. Butcher* (2016) 247 Cal.App.4th 310, 318; *People v. Noyan* (2014) 232 Cal.App.4th 657, 663.) A court abuses its discretion when its decision "exceeds the bounds of reason, all of the circumstances being considered." (*Downey*, at pp. 909-910, quoting *People v. Giminez* (1975) 14 Cal.3d 68, 72.)

The trial court did not abuse its discretion in revoking defendant's probation.

The court's decision to revoke defendant's probation was not internally inconsistent. The court explained how defendant had been given—and had not taken advantage of—"opportunity[] after opportunity[] after opportunity" that justified the revocation of probation, but that the court was willing to give defendant one further, final chance at reinstatement of probation contingent upon his placement in a mental health program *if one could be found for him*. One was not found. On these facts, the court's decision to revoke probation is neither inconsistent nor arbitrary.

Defendant further suggests that the court's decision to allow his counsel to try to find a program amounts to a finding that defendant does not pose a risk to public safety if released (accord, *People v. Monette* (1994) 25 Cal.App.4th 1572, 1575 [courts deciding whether to reinstate or revoke probation should examine "whether [the defendant] can be safely allowed to remain in society"]), and that the court cannot back away from that "finding" and place him in prison without being inconsistent. There is no inconsistency because the trial court's ruling could, at best, be construed as a finding that defendant did not pose a risk to public safety *if placed in a suitable residential program*; such a finding does not logically preclude sending defendant to prison if no such program is available.

The court's decision to revoke probation was also not unlawful. To be sure, a court may not revoke probation unless the underlying violation involves willful conduct by the defendant. (*People v. Cervantes* (2009) 175 Cal.App.4th 291, 295; see also *People v. Galvan* (2007) 155 Cal.App.4th 978, 984 [defendant failed to report to his probation officer because he was deported; failure not willful]; *In re Robert M.* (1985) 163 Cal.App.3d 812, 816-817 [defendant failed to maintain "satisfactory grades and citizenship"; failure not willful given his low IQ and below-grade level reading and math skills].) However, this maxim is irrelevant here. The underlying violation in this case—that is, the amalgamation of defendant's string of incidents at the Center involving inappropriate sexual conduct, use of his cell phone, and a physical altercation—was willful. The fact that the mental health program in Acton was not available due to his health condition does not cast any doubt upon the willfulness of defendant's violation.

DISPOSITION

The order is affirmed.

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_____, J.
HOFFSTADT

We concur:

_____, Acting P. J.
ASHMANN-GERST

_____, J.*
GOODMAN

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