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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

MARTELL H. FLORENCE,

Defendant and Appellant.

B296341

Los Angeles County

Super. Ct. No. NA106977

APPEAL from a judgment of the Superior Court of Los Angeles County, Tomson T. Ong, Judge. Affirmed as modified.

James P. Cooper III, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Lance E. Winters, Senior Assistant Attorney General, Zee Rodriguez and Paul S. Theis, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Appellant and defendant Martell Florence pled guilty to injuring a girlfriend and making criminal threats. The court imposed a four-year prison sentence, stayed execution of sentence, and placed Florence on five years probation. Florence later admitted he violated probation. In response, the court terminated probation and executed the four-year prison sentence. On appeal, Florence argues the trial court abused its discretion by executing the four-year sentence, contending it was unaware it had the discretion to revoke and reinstate probation. We disagree and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A felony complaint charged Florence with one count of injuring a spouse, cohabitant, fiancé, boyfriend, girlfriend or child's parent (Pen. Code,¹ § 273.5, subd. (a); count one), two counts of criminal threats (§ 422, subd. (a); counts two & three), one count of child abuse (§ 273a, subd. (a); count four), and one count of assault with a deadly weapon (§ 245, subd. (a)(1); count five). The complaint further alleged Florence personally used a deadly or dangerous weapon (§ 12022, subd. (b)(1)) during the commission of counts two, three and four.

Florence waived his constitutional rights and pled guilty to counts one and three. The court found the police report and early disposition report served as a factual basis for Florence's plea and

¹ All undesignated statutory references are to the Penal Code.

accepted the plea. The court dismissed counts two, four, and five pursuant to the plea agreement. It imposed a four-year prison sentence and suspended its execution. It placed Florence on formal probation for five years, one condition of which was that he successfully complete a domestic violence treatment program.

On October 17, 2018, the trial court revoked probation upon learning Florence had been dismissed from the domestic violence program.

On January 24, 2019, Florence admitted to violating the terms of his probation. The trial court terminated probation and executed the suspended four-year sentence, which consisted of an upper term on count one. The court also sentenced Florence to a concurrent upper term of three years on count three.

Florence timely appealed.

DISCUSSION

1. The Trial Court Did Not Abuse Its Discretion

Florence contends the trial court abused its discretion by terminating probation and executing the four-year sentence. He argues the record shows the court did not realize it had the option to revoke and reinstate probation rather than execute the sentence, and asks that we remand the case so the court can exercise the discretion it allegedly did not know it had. (See *People v. Medina* (2001) 89 Cal.App.4th 318, 321 [“Although section 1203.2 does not expressly state that a defendant may be ‘reinstated’ on probation, numerous cases have recognized that the court’s authority to modify probation necessarily presumes the power to reinstate it.”].)

In support of his argument, Florence relies on the court’s response to defense counsel’s request (before Florence admitted

the probation violation) for an indicated sentence, to which the court replied: “He has four years suspended. I have no wiggle room.” In context, the court’s response does not show it believed it had no discretion to reinstate probation. The court was simply correctly explaining that if it revoked (and did not reinstate) probation, it would have to execute the previously suspended four-year sentence (rather than sentence Florence to some lesser term). (See § 1203.2, subd. (c) [“Upon any revocation and termination of probation the court may, if the sentence has been suspended, pronounce judgment for any time within the longest period for which the person might have been sentenced. However, if the judgment has been pronounced and the execution thereof has been suspended, the court may revoke the suspension and order that the judgment shall be in full force and effect.”]; see also *People v. Howard* (1997) 16 Cal.4th 1081, 1088.)

We must remand when the record shows the court misunderstood or was unaware of the scope of its discretionary powers. (*People v. Bolian* (2014) 231 Cal.App.4th 1415, 1421.) “We need not remand, however, when . . . the record is merely silent on whether the court misunderstood its sentencing discretion.” (*Ibid.*) “[A] trial court is presumed to have been aware of and followed the applicable law.” [Citations]” (*People v. Brown* (2007) 147 Cal.App.4th 1213, 1229.) We reject Florence’s argument that the trial court misunderstood or was unaware of its discretionary power to revoke and reinstate probation – his contention is unsupported by the record.

2. Abstract of Judgment

Our review of the record shows that although the trial court orally imposed a three-year concurrent upper term on count

three (§ 422, criminal threats), the abstract of judgment incorrectly states the court imposed a four-year term on that count. We are authorized to order correction of an abstract of judgment that does not accurately reflect the sentence imposed orally by the trial court. (*People v. Mitchell* (2001) 26 Cal.4th 181, 185.) We order the abstract corrected to reflect the three-year concurrent term orally imposed.

DISPOSITION

The clerk of the superior court is directed to prepare an amended abstract of judgment consistent with this decision, then deliver copies of the corrected abstract to the Department of Corrections. In all other respects, the judgment is affirmed.

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CURREY, J.

WE CONCUR:

WILLHITE, Acting P. J.

COLLINS, J.