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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

AUGUSTUS GOLDEN,

Defendant and Appellant.

2d Crim. No. B280878
(Super. Ct. No. 7PH00395)
(Los Angeles County)

Augustus Golden appeals the trial court's order revoking and restoring his parole on the condition that he serve 180 days in county jail. (See Pen. Code,¹ §§ 1203.2, 3000.08.) Appellant contends the order was an abuse of discretion. We affirm.

FACTS AND PROCEDURAL HISTORY

In 2013, appellant was convicted of failing to register as a sex offender (§ 290.018, former subd. (b)(1), now subd. (b)) and was sentenced to two years and eight months in state prison. He was released on parole in March 2014. As a condition of his parole, he

¹ All statutory references are to the Penal Code.

was required to wear a global positioning system (GPS) tracking device and charge it at least twice a day for at least an hour each time. He was also required to keep his parole agent informed of his residence and report in advance any change in residence.

In October 2016, appellant was admitted to Veterans Administration (VA) Mental Health Services pursuant to a section 5250 hold. His GPS device was removed. When appellant was discharged on November 23, 2016, Parole Agent Carlos Rowe fitted with him with a new GPS device and referred him to Volunteers of America, a community-based housing program in downtown Los Angeles. Appellant went to Volunteers of America and left that same day without reporting to Rowe.

Two days later, Rowe received a “dead battery” alert from appellant’s GPS device. Rowe tried to locate appellant, but was unable to do so. Appellant was eventually located and arrested on January 13, 2017.

Rowe testified at appellant’s combined probable cause and contested parole revocation hearing. Rowe, who had been supervising appellant for about a year, believed that appellant’s mental health issues rendered him “incapable of maintaining the routine of charging the [GPS] device on a regular basis. It’s kind of difficult for him. He needs continuous supervision.” Rowe offered that appellant was previously able to charge his GPS device when assisted by someone else. Rowe spoke to personnel at the VA Hospital about appellant’s need for assistance, but did not convey this to anyone at Volunteers of America.

Based on his experience supervising appellant, Rowe believed he would benefit from a conservatorship. Rowe spoke to personnel at the VA Hospital about this, but was told that the hospital does not assist with conservatorships.

Appellant declined to testify at the hearing. At the conclusion of the hearing, appellant’s attorney referred to Rowe’s testimony

and added “we are not at all aware of whether Volunteers of America was capable of” assisting appellant with the charging of his GPS device.

Prior to issuing its ruling, the court noted appellant had disabled his GPS device four times during his first year of parole and thereafter kept his device charged. The court stated, “I don’t have anything in front of me that during that entire period of time somebody was doing it for him. . . . I understand that Agent Rowe believes that [appellant] may not be capable of following the parole terms and conditions, and yet parole could discharge him if they don’t believe he’s capable, but they haven’t. The public defender has not declared a doubt today.”

The court added: “I have no information from [appellant] today that he’s incapable of doing it. I simply know that he didn’t and that he walked away from the housing that parole attempted to put him in. So if parole didn’t believe he was capable of abiding by the . . . terms and conditions, why is he still on parole? Number 2, if they didn’t believe that he was capable of abiding by the terms and conditions of parole, then why was a petition filed? All I know is that he walked away from the facility without leaving a forwarding address. He didn’t charge his battery. No real understanding of why that is other than a lot of speculation and nothing from [appellant] himself.”

The court proceeded to find appellant had violated the terms and conditions of his parole by (1) disabling his GPS device; and (2) absconding from parole supervision. Parole was revoked and restored under the same terms and conditions, but modified to include a 180-day county jail term.

DISCUSSION

Appellant contends the court abused its discretion by failing to consider his mental state in deciding whether to revoke his parole. We are not persuaded.

Appellant relies on *People v. Breaux* (1980) 101 Cal.App.3d 468 (*Breaux*) for the proposition that “[a] person’s sanity or the fact that he suffers from a mental disease or defect is relevant for the court to consider in determining whether a probationer’s probation should be revoked or modified.” (*Id.*, at p. 474, fn. omitted.)² He claims “[t]he court . . . failed to consider the evidence offered on this topic because it found [Rowe’s] testimony to be nothing more than speculation.” He then reasons that “[s]ince appellant appears willing and able to abide by the terms and conditions [of parole] when assisted, the court was required to consider this information before deciding to simply commit him to county jail for the maximum term instead of, at least, considering other options that might actually help appellant inch closer toward rehabilitation.”

Appellant’s claim ignores the court’s finding that he violated his parole by absconding. Rowe’s testimony related exclusively to appellant’s ability to comply with the condition that he keep his GPS device charged. In any event, the court *did* consider that testimony, yet found it lacking. “Since the court received and considered such evidence [of appellant’s mental state], our concern is limited to whether, under the circumstances, the revocation constituted an abuse of discretion.” (*Breaux, supra*, 101 Cal.App.3d at p. 475.) “Although a court may not act arbitrarily or capriciously in revoking probation [or parole] [citation], its discretion in this matter is very broad [citation].” (*Ibid.*)

There was no abuse of discretion here. As the court noted, appellant left Volunteers of America without notifying his parole

² The People do not dispute that this proposition also applies in parole revocation proceedings. (See *People v. Vickers* (1972) 8 Cal.3d 451, 458 [with regard to an offender’s due process rights, there is no substantial distinction between parole revocation proceedings and probation revocation proceedings].)

agent and his whereabouts remained unknown for over a month. Moreover, appellant did not testify at his parole revocation hearing or offer any evidence to support Rowe's testimony regarding his ability to comply with the condition that he keep his GPS device charged.

The court also reasonably noted that Rowe's testimony was inconsistent with the parole agency's decision to petition for revocation of appellant's parole. In its parole violation report, the parole agency stated that appellant was "in dire need of appropriate sanctions" and recommended he be "return[ed] to custody" for 180 days. The parole agency made this recommendation "[n]otwithstanding" that Rowe had "wonder[ed] if [appellant's] actions stem more from his mental health status, rather than from inherent delinquency tendencies." The court thus acted within its discretion in ordering exactly what the parole agency had recommended.

DISPOSITION

The order revoking parole is affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P. J.

TANGEMAN, J.

Jacqueline H. Lewis, Judge

Superior Court County of Los Angeles

Heather E. Shallenberger, under appointment by the Court of Appeal, for Defendant and Appellant.

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