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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSE LUIS RODRIGUEZ,

(AKA: Enrique Amaya),

Defendant and Appellant.

B254903

(Los Angeles County  
Super. Ct. No. KA053282)

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

Steven D. Blades, Judge. Affirmed.

Jared G. Coleman, 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, Jason Tran and Herbert S. Tetef, Deputy Attorneys General, for Plaintiff and Respondent.

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Jose Luis Rodriguez, also known as Enrique Amaya, appeals from an order finding him in violation of his felony probation and imposing his suspended sentence of five years in the state prison. On appeal, Rodriguez contends there was no substantial evidence to support the trial court's finding that he willfully violated his probation. He argues the People and the court violated his due process rights by failing to give him written notice of the alleged violation and a written statement of reasons for the court's decision. Rodriguez also contends the court did not understand it had the option to reinstate his probation. We find no error and therefore affirm.

### ***FACTUAL AND PROCEDURAL BACKGROUND***

#### ***1. The Charge, Plea Agreement, and Bench Warrant***

In 2001 the People charged Jose Luis Rodriguez -- then using the name Enrique Amaya -- with possession of cocaine for sale in violation of Health & Safety Code section 11351. The People alleged that Rodriguez was personally armed with a firearm in the commission of that offense in violation of Penal Code section 12022(c). According to the testimony at the preliminary hearing, police found four packages of powder cocaine, a loaded handgun, and money in a bedroom in Rodriguez's home. After a detective advised Rodriguez of his *Miranda* rights<sup>1</sup> and he waived them, Rodriguez told the detective that a friend had given him the gun and that he sold cocaine.

On January 22, 2002, Rodriguez entered into a plea agreement with the People. Rodriguez pleaded no contest to the charge and admitted the "personally armed" allegation. Rodriguez and the People agreed the court would sentence him to the low term of two years on the possession for sale count plus the low term of three years on the "personally armed" allegation for a total of five years in the state prison. The court would suspend execution of that sentence and place Rodriguez on three years of formal felony probation. Rodriguez would serve 90 days in the county jail and perform

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<sup>1</sup> *Miranda v. Arizona* (1966) 384 U.S. 436.

90 days of community labor for Cal-Trans or Tree Farm at the direction of the probation department.

A court-certified Spanish language interpreter assisted Rodriguez throughout the plea proceedings. Rodriguez initialed and signed a *Tahl* waiver form.<sup>2</sup> The court then summarized on the record the parties' agreement. The court told Rodriguez (among other things): "Another consequence of the plea is that . . . immediately upon your entering probation you must register as a narcotic[s] offender. Your failure to register would constitute a new crime which could violate your probation and cause the state prison sentence to be imposed." The court asked Rodriguez if he understood and Rodriguez said "yes." At defense counsel's request, the court continued the probation and sentencing hearing and surrender until February 5, 2002. The court ordered Rodriguez -- who was out of custody on bail -- to return on that date.

Rodriguez returned on February 5, 2002, and the court sentenced him in accordance with his plea agreement with the People.<sup>3</sup> Again, a court-certified interpreter assisted Rodriguez. The court placed Rodriguez on formal felony probation for three years. The court ordered Rodriguez to obey all laws, court orders, and probation department rules and regulations. The court ordered Rodriguez to "cooperate with [his] probation officer in a plan for drug education and counseling" and to "submit to periodic anti-narcotic tests as directed by the probation officer." The court also ordered him to register with his local police or sheriff's department as a drug offender and to pay a restitution fine and probation supervision costs. The court ordered

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<sup>2</sup> *In re Tahl* (1969) 1 Cal.3d 122.

<sup>3</sup> The minute order for the February 5 sentencing states "imposition of sentence suspended" but this plainly is a typographical error, as the order also shows that the court sentenced Rodriguez to five years in the state prison and placed him on probation. Accordingly, the trial court obviously suspended *execution* of Rodriguez's sentence rather than its *imposition*. No transcript of the February 5 sentencing is available. The court reporter submitted a declaration that, because the court destroys court reporters' notes after ten years, a transcript for the February 5 proceedings cannot be prepared. (Declaration of Kathryn Tippings, April 23, 2014.)

Rodriguez to “maintain [his] residence as approved by the probation officer,” to submit to search and seizure, and not to possess any weapons. Even though the plea agreement recited on January 22 provided for 90 days in the county jail *and* 90 days of community labor, the prosecutor and the court apparently agreed to reduce Rodriguez’s obligation. The minute order states, “In lieu of further county jail time,<sup>4</sup> the defendant is ordered to serve 90 days in the work furlough, Tree Farm or Cal-Trans programs as determined by the probation officer.”<sup>5</sup> The court set April 9, 2002, as the next date “to determine which program the defendant is to enroll in.” The court exonerated Rodriguez’s bail.

Rodriguez did not appear in court on April 9, 2002. His attorney told the court that Rodriguez might be “detained by the Immigration and Naturalization Service.” The court revoked Rodriguez’s probation and held a bench warrant until April 24, 2002. The court ordered a supplemental probation report. The court “direct[ed] the probation officer to determine the defendant’s INS status and to make a recommendation regarding community service.” On April 24, 2002, the court found, based on the probation department’s report, “that the defendant was deported to Mexico on April 15, 2002.” The court issued a no-bail warrant for Rodriguez’s arrest.

2. *Rodriguez’s Arrest on the Warrant More than 11 Years Later, the Probation Violation Hearing, and the Court’s Order*

Rodriguez returned to the United States a few months after he was deported in 2002. He never came to court. He never reported to the probation department. He

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<sup>4</sup> As of February 5, 2002, Rodriguez had presentence credit for four actual days in custody.

<sup>5</sup> Rodriguez’s contentions on appeal that “the trial court did not explain the conditions of probation at the hearing” and that “there is nothing on the record that indicates that these conditions were translated or interpreted to appellant in his native Spanish” are without merit. The minute order of the February 5, 2002 proceedings plainly states that the court told Rodriguez the terms of his probation and that a court-certified Spanish language interpreter interpreted for him. Rodriguez’s contention seems to be that the court told Rodriguez nothing but the judicial assistant entered a minute order reflecting proceedings that never happened. There is no support for such a contention.

never did his community labor. He never participated in a drug counseling program or submitted to drug testing. He never registered as a narcotics offender. He never made any payments toward restitution or probation costs. In October 2013 -- more than 11 years and six months after being sentenced -- Rodriguez was arrested on the warrant for driving without a license.

On October 21, 2013, the trial court recalled the warrant, set the matter for a hearing, and ordered a supplemental probation report. On November 13, 2013, the court continued the hearing at defense counsel's request. On January 10, 2014, Rodriguez requested a formal hearing and the court set the hearing for January 31, 2014.

At the hearing on January 31, 2014,<sup>6</sup> the People called probation officer David Crowley. Crowley testified that Rodriguez told him "he returned to the United States a few months after being deported." Crowley testified that Rodriguez never reported to probation or complied with any of the terms of his probation. Crowley said Rodriguez told him he "felt that it was unfair that he was deported and thought that would be the sum total of the penalty that he would pay." Crowley said Rodriguez told him he "did not understand that he had any further obligations to the probation department or to the court."

The prosecutor asked the court to find Rodriguez in violation of probation and to execute the suspended sentence. Defense counsel said, "I think it's clear that Mr. Rodriguez is in violation of probation." But, counsel argued, "[t]he issue is whether or not he fully understood what his obligations to the court were." Defense counsel asked the court to sentence Rodriguez to the five years, then "immediately recall" the

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<sup>6</sup> At the outset of the hearing, the People offered Rodriguez two years. Presumably this would have been accomplished by the court executing the five-year sentence, immediately recalling it, and sentencing Rodriguez to the low term of two years for the offense, with punishment for the firearm allegation stayed. Rodriguez rejected the People's offer.

sentence and sentence him to six to 12 months instead.<sup>7</sup> The prosecutor objected that the “suspended sentence . . . [is] supposed to actually bind the parties to something.”

The court stated it had considered all the arguments. It found Rodriguez to be in violation of his probation and executed the five-year sentence. The court granted Rodriguez presentence credits of 586 days.<sup>8</sup>

### ***APPELLANT’S CONTENTIONS***

Rodriguez contends the evidence was insufficient to show he willfully violated the terms of his probation. He argues the People and the court violated his due process rights by not giving him “written notice of any violation other than [his] failure to appear at a hearing in 2002” and by not stating the reasons the court found him in violation. Rodriguez also contends the trial court “was unaware that it had discretion to reinstate probation rather than impose [the] suspended sentence.”

### ***DISCUSSION***

#### ***1. Burden of Proof and Standard of Review***

Section 1203.2, subdivision (a) of the Penal Code authorizes a court to revoke a defendant’s probation “if the interests of justice so require and the court, in its judgment, has reason to believe . . . that the person has violated any of the conditions of his or her supervision.” (See also *People v. Rodriguez* (1990) 51 Cal.3d 437, 440 (*Rodriguez*); *People v. Johnson* (1993) 20 Cal.App.4th 106, 110 [“ ‘[w]hen the evidence

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<sup>7</sup> Apparently defense counsel was proposing that the court reinstate Rodriguez on probation, order him to serve county jail time, then terminate probation. The sentencing triad for the offense to which Rodriguez pleaded was two, three, or four years in the state prison and the triad for the “personally armed” allegation was three, four, or five years. Accordingly, the court could not legally sentence Rodriguez to six to 12 months in the state prison given the charge and the enhancement.

<sup>8</sup> The court correctly calculated Rodriguez’s 2013-2014 credits to be 105 actual days. The court erroneously gave Rodriguez credit for an additional 188 actual days in 2001-2002 rather than the four actual days he served. The court was under the misimpression that Rodriguez had remained in custody from his arrest to his sentencing. In fact, he had bonded out. Neither party has raised this error on appeal.

shows that a defendant has not complied with the terms of probation, the order of probation may be revoked at any time during the probationary period’ ”].)

“ ‘Probation is an act of clemency . . . . ’ ” (*People v. Superior Court (Du)* (1992) 5 Cal.App.4th 822, 831.) In considering whether to revoke probation, the court’s inquiry is directed “to the probationer’s performance on probation.” (*People v. Beaudrie* (1983) 147 Cal.App.3d 686, 691.) The standard of proof in probation revocation proceedings is proof by a preponderance of the evidence. (*Rodriguez, supra*, 51 Cal.3d at p. 447; *People v. Stanphill* (2009) 170 Cal.App.4th 61, 72.) The trial court is vested with broad discretion in determining whether to reinstate probation following revocation of probation. (*People v. Jones* (1990) 224 Cal.App.3d 1309, 1315.)

We review the trial court’s decision to revoke probation for an abuse of discretion. (*Rodriguez, supra*, 51 Cal.3d at p. 443; *People v. Downey* (2000) 82 Cal.App.4th 899, 909-910.) A probation revocation decision is subject to the substantial evidence standard of review. (See *People v. Superior Court (Jones)* (1998) 18 Cal.4th 667, 681.) “The standard is deferential: ‘When a trial court’s factual determination is attacked on the ground that there is no substantial evidence to sustain it, the power of an appellate court *begins* and *ends* with the determination as to whether, *on the entire record*, there is substantial evidence, contradicted or uncontradicted, which will support the determination . . . . ’ [Citation.]” (*Ibid.*) “ ‘[O]nly in a very extreme case should an appellate court interfere with the discretion of the trial court in the matter of denying or revoking probation. . . . ’ ” (*Rodriguez, supra*, 51 Cal.3d at p. 443.) The burden of demonstrating an abuse of the trial court’s discretion rests squarely on the appellant. (*People v. Vanella* (1968) 265 Cal.App.2d 463, 469.)

2. *The Trial Court Did Not Abuse Its Discretion in Finding Rodriguez in Violation of Probation and In Executing his Suspended Sentence*
  - a. *Substantial Evidence Supports the Trial Court's Finding that Rodriguez Willfully Violated his Probation by Ignoring All of His Probationary Terms for more than a Decade*

Rodriguez asserts there was no substantial evidence that he willfully violated his probation. He contends his deportation was beyond his control and he “was not aware that he needed to report to probation after his deportation to Mexico,” when he returned to the United States.

Rodriguez’s deportation may have been beyond his control<sup>9</sup> but -- by his own admission -- he returned almost immediately to the United States. Yet for nearly 12 years he did absolutely nothing to comply with the terms of his probation. He never reported to the probation department. If he were -- as he now says -- “confused,” he never came to court to ask what his obligations were. He never completed the community labor the court and the prosecutor permitted him to do instead of jail time, nor began (much less completed) a drug treatment program, nor drug tested, nor registered as a narcotics offender as the law required. Rodriguez was represented by counsel at the time of his plea and at sentencing, and a court-certified Spanish language interpreter interpreted for him at each court proceeding. In listing the terms of his probation, the court told Rodriguez that “after you’re released from custody and during -- or immediately upon your entering probation you must register as a narcotic[s] offender. Your failure to register would constitute a new crime which could violate your probation and cause the state prison sentence to be imposed.” The court asked Rodriguez, “Do you understand your obligation to register with the police department as a narcotic[s] offender?” Rodriguez answered, “Yes.”

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<sup>9</sup> A probationer who fails to report because federal authorities deported him has not willfully violated his probation. (*People v. Galvan* (2007) 155 Cal.App.4th 978, 984 (*Galvan*).)



Rodriguez cites *Galvan, supra*, 155 Cal.App.4th 978. That case is distinguishable. Galvan was convicted of burglary and narcotics possession. The court placed him on probation and ordered him to report to the probation department within 24 hours of his release from custody. The court also told Galvan he was to report to probation within 24 hours of his return to the United States if he were deported or left the country. Federal authorities deported Galvan. He returned at some point to the United States and was arrested on an outstanding warrant. The court of appeal ruled the trial court should not have found Galvan in violation of his probation because his deportation was not willful *and because there was no evidence “showing how long Galvan had been back in the United States before he was arrested . . . .”* (*Galvan, supra*, 155 Cal.App.4th at p. 982-983 (emphasis added).) Here, in contrast, by Rodriguez’s own admission,<sup>10</sup> he returned to the United States within a few months of his April 2002 deportation. Yet he made no effort for more than a decade to report to probation, to come to court, or to comply in any way with his plea agreement with the People or the terms of his probation.

On this record, the trial court acted well within its discretion in finding Rodriguez’s claims of ignorance and confusion not to be credible and his probation violation to be willful.

b. *The Court Did Not Violate Rodriguez’s Due Process Rights*

Rodriguez also contends he was entitled to written notice of the violation and to written findings by the trial court. We conclude the trial court complied with the requirements of due process and that Rodriguez has forfeited this argument in any event.

A probationer is entitled to both state and federal due process rights in determining a violation of probation. (*Black v. Romano* (1985) 471 U.S. 606, 612;

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<sup>10</sup> “The interest of the state in monitoring the probation compliance of a convicted offender mandates the inclusion [in evidence at the violation hearing] of his admission . . . .” (*People v. Monette* (1994) 25 Cal.App.4th 1572, 1576 [court properly admitted into evidence at probation violation hearing defendant’s statement to probation officer admitting gun possession].)

*People v. Vickers* (1972) 8 Cal.3d 451, 457-458 (*Vickers*).) Although due process requires that the People give a defendant notice of a claimed probation violation, the less formal nature of violation proceedings allows some measure of flexibility in affording due process standards. A strict set of procedural rules is not mandated. (*Id.* at p. 458; *People v. Felix* (1986) 178 Cal.App.3d 1168, 1171-1172.)

The trial court issued a warrant for Rodriguez in April 2002 and he was arrested on that warrant in October 2013 when he was stopped for driving without a driver's license. On October 21, 2013, Rodriguez was brought to court; the court recalled the warrant and ordered a supplemental probation report. On November 13, 2013, Rodriguez's attorney waived Rodriguez's appearance and asked to continue the probation violation hearing setting. On December 5, 2013, Rodriguez again was in court with counsel and an interpreter; the court set the matter for "further hearing" on January 10, 2014. On January 10, 2014, Rodriguez's counsel waived his appearance and told the court Rodriguez was "requesting a probation violation hearing." Accordingly, the court set the matter for a formal hearing on January 31, 2014. On January 31, 2014, both the People and Rodriguez "announce[d] ready to proceed" and the master calendar court sent the case to a trial court for the hearing. Somewhere along the way, the court and counsel received the supplemental report from the probation department prepared by Deputy Probation Officer David Crowley.<sup>11</sup>

Accordingly, there were four court dates after Rodriguez was arrested and before his probation violation hearing began. The probation department prepared a supplemental report for the court and counsel. Those reports typically summarize the history of the case and describe what has happened in the intervening years, and the probation officer typically makes a recommendation to the court. Regardless of whether the supplemental report could be considered "written notice" that Rodriguez was alleged to have violated his probation, on this record Rodriguez and his attorney were well aware of the basis for the alleged violation.

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<sup>11</sup> The superior court has been unable to locate the report.

Moreover, by announcing ready to proceed and going forward with the hearing without demanding a written document, Rodriguez forfeited any argument that the lack of a written notice violated his due process rights. (See *People v. Buford* (1974) 42 Cal.App.3d 975, 982 [defendant and counsel received probation department report; they asked for and received a continuance to prepare; they proceeded with the revocation hearing and did not “contend that he had not been given the requisite notice;” defendant therefore could not “claim a denial of due process”].) Rodriguez did not object to the hearing on the ground of inadequate notice; at the formal hearing the prosecutor elicited testimony about Rodriguez’s failure to report and Rodriguez’s counsel defended against that allegation. In short, Rodriguez was afforded notice and an opportunity to respond. Thus, due process was satisfied. (*People v. Hawkins* (1975) 44 Cal.App.3d 958, 967; *People v. Campos* (1988) 198 Cal.App.3d 917, 921.)

Nor did the trial court violate Rodriguez’s due process rights by failing to issue a written order. Plainly the court found Rodriguez in violation of probation for never reporting or doing any of the things he promised to do when granted probation. The court noted that, after Rodriguez was deported, “he came back anyway. So I’m having a difficult time believing that he was so naive or failed to understand what was happening here.” Quoting from the plea transcript, the court noted the sentencing court had asked Rodriguez if he understood his obligation to register as a narcotics offender and Rodriguez had said yes. The court said, “That . . . assumes that he is out of custody, but when he left the United States and then eventually came back, he was out of custody. So he understood he had an obligation to register with the police department as a narcotic[s] offender, but he never did.” Again, defense counsel did not demand or request a written statement of reasons for the court’s conclusion. Rodriguez therefore has forfeited the issue.

- c. *Rodriguez Had Not Shown that the Trial Court “was not aware of its discretion when it imposed the suspended sentence”*

Finally, Rodriguez contends “the trial court was unaware that reinstating probation with modified conditions was within its discretion when it imposed the five-year suspended sentence.” The record does not support Rodriguez’s contention.

Deputy Probation Officer Crowley testified his recommendation was that the court reinstate Rodriguez’s probation. The problem was that federal immigration authorities had placed a hold on Rodriguez, he was going to be deported again, and so he would not be able to report to probation. Defense counsel told the court she was “not arguing give him probation again.” Counsel said, “That’s why I ask for six months to a year, because he will be deported again. I believe there’s an I.C.E. hold on him now.” Rodriguez’s attorney did not ask the court to reinstate his probation (other than to give him jail time and then terminate probation), because to do so would only set Rodriguez up for another probation violation when he was deported again and then failed again to report. After discussing the options with counsel, the court told defense counsel it had “considered” her request for less time: “I really have, and you made a good argument and you’ve done the best you could for him.” The court ultimately decided, however, to execute the suspended five-year sentence. The court did not abuse its discretion in doing so.

***DISPOSITION***

The judgment is affirmed.

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JONES, J.\*

WE CONCUR:

KITCHING, Acting P. J.

ALDRICH, J.

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