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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.

CHRISTOPHER DANIEL
LOPEZ,

Defendant and Appellant.

2d Crim. No. B286099
(Super. Ct. No. 1450420)
(Santa Barbara County)

Christopher Daniel Lopez appeals an order terminating his probation and sentencing him to five years in state prison. He contends the trial court erred when it (1) denied his request for an order reinstating probation, and (2) denied him certain presentence custody credits. We affirm.

FACTS AND PROCEDURAL HISTORY

In 2014, Lopez pled guilty to unlawful driving or taking a vehicle and admitted two prior prison term allegations.

(Veh. Code, § 10851, subd. (a); Pen. Code,¹ § 667.5, subd. (b).) The trial court suspended imposition of sentence and granted him five years of probation with terms and conditions, including the completion of a residential treatment program.

From 2014 to 2017, Lopez did not comply with the terms of his probation. He absconded from probation supervision three times and committed new crimes, including drug offenses. He was in and out of at least four treatment programs. He did not complete any of them.

In April 2017, the trial court revoked probation after Lopez left a treatment program and absconded from probation supervision for one year. Lopez asked the court to reinstate probation and offered to waive presentence custody credits and enter another treatment program. The court agreed and reinstated probation. Lopez requested to be placed at the Santa Monica ARC (the ARC) treatment program. The court released him to the ARC.

About a week later, Lopez used heroin and left the ARC. The trial court terminated probation and sentenced him to five years in state prison.

DISCUSSION

Probation Termination

Lopez contends the trial court erred when it denied his request for an order reinstating probation and imposed a five-year prison sentence. We disagree because the court's order was not arbitrary, capricious, or absurd.

Once a trial court revokes probation, it may either reinstate it or terminate it and impose a prison sentence. (*People*

¹ Unspecified statutory references are to the Penal Code unless stated otherwise.

v. Medina (2001) 89 Cal.App.4th 318, 322.) We review the court's decision for abuse of discretion. (*People v. Downey* (2000) 82 Cal.App.4th 899, 909-910.) We will not disturb the decision unless the court has acted in an arbitrary, capricious, or absurd manner. (*Ibid.*)

The trial court did not abuse its discretion. Lopez repeatedly violated the conditions of his probation. (*People v. Noyan* (2014) 232 Cal.App.4th 657, 663.) He did not complete a residential treatment program. He entered several programs, but he either voluntarily left or was removed from all of them. Moreover, Lopez violated the conditions of probation when he used heroin. He has an extensive and continuous drug and criminal history, dating back to 1980. This supports the court's conclusion that he is addicted and unlikely to succeed on probation. (*People v. Stuckey* (2009) 175 Cal.App.4th 898, 916-917.)

Lopez contends the trial court abused its discretion when it did not consider facts in favor of reinstating probation. But these facts are discussed in the probation report, and Lopez discussed them at the probation violation hearing. We presume the trial court considered them. (*People v. Kelley* (1997) 52 Cal.App.4th 568, 582.) Regardless, the record demonstrates that Lopez performed poorly on probation. We cannot say that the court acted in an arbitrary, capricious, or absurd manner based on this record.

Custody Credits

Lopez contends the court erred when it denied him certain presentence custody credits because (1) it was unclear that he waived all presentence custody credits for time served before his placement at the ARC (about 730 days), and (2) even if

he did, the waiver agreement was invalid because the court did not send him to a “legitimate” treatment program. We conclude Lopez waived all presentence custody credits for time served before his placement at the ARC.

A defendant may waive presentence custody credits as a condition of probation. (§ 2900.5; *People v. Johnson* (2002) 28 Cal.4th 1050, 1054-1055.) The waiver must be knowing and intelligent. (*Id.* at p. 1055.) A waiver is knowing and intelligent if the defendant “‘understood he was giving up custody credits to which he was otherwise entitled.’ [Citation.]” (*People v. Jeffrey* (2004) 33 Cal.4th 312, 320.)

Lopez knowingly and intelligently waived all presentence custody credits for time served before he entered the ARC. At the sentencing hearing, Lopez stated that he had “730 days credit, two years” and that he “can waive them right now” because he was “going to complete probation.” Defense counsel stated that he discussed the credit waiver with Lopez and that Lopez was “willing to do that.”

1. Clarity of the Waiver

Lopez argues that it was unclear whether he was waiving all 730 days of presentence custody credit or only credits for time spent in a residential treatment program. When the court accepted his waiver, it asked him whether he waived his “right to receive custody credits . . . for the time [he spent] in a residential treatment program.” But the record shows he understood he was waiving all presentence custody credits because he specified he was waiving all “730 days, two years” of credit. Moreover, after Lopez waived the credits, the prosecutor discussed the calculation of credits and mentioned that a probation report prepared months before reflected 576 days of

“total credits,” which included time spent in jail custody. He did not object to the prosecutor’s reference to total credits, indicating that he understood he was waiving credits for time spent in jail custody.

2. Validity of the Waiver Agreement

Lopez argues the waiver agreement was invalid because the court did not send him to a “legitimate” program: instead the ARC housed him in a place where drugs were available. (*People v. Tang* (1997) 54 Cal.App.4th 669, 680.) But Lopez specifically agreed to waive his presentence custody credits and enroll in this particular treatment program in exchange for another chance on probation. Lopez received the benefit of the waiver agreement when the court reinstated probation and gave him another chance at treatment in the program of his choice. To find the waiver agreement invalid now would be “unjust enrichment.” (*People v. Arnold* (2004) 33 Cal.4th 294, 308 [a rule that gives back previously waived credits as a consequence of a later violation constitutes unjust enrichment].) Lopez received the “benefit of the bargain” and cannot now be permitted “to revoke the consideration he gave up to obtain the benefit of that bargain.” (*Ibid.*)

DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED.

TANGEMAN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Gustavo E. Lavayen, Judge

Superior Court County of Santa Barbara

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