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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.

ALEJANDRO SALAS,

Defendant and Appellant.

2D Crim. No. B283045
(Super. Ct. No. 2012039803)
(Ventura County)

Alejandro Salas appeals a sentence the trial court imposed after it revoked his parole for a parole supervision violation. (Pen. Code, § 3000.08.)¹ The court imposed a 120-day period of confinement in the county jail for Salas’s violation and ruled that period would run “*consecutively to any time* he is serving otherwise.” (Italics added.) We conclude, among other things, that the trial court lacked authority to run a period of confinement for a parole violation consecutively to a sentence on

¹ All statutory references are to the Penal Code.

another criminal case. The portion of the judgment imposing a consecutive sentence is stricken; as so modified, we affirm.

FACTS

On November 2, 2012, a stroke victim saw Salas “tagging on the street near [a restaurant].” The stroke victim said Salas attacked him with a rock. Salas was arrested.

On January 22, 2013, Salas pled guilty to assault with a deadly weapon (§ 245, subd. (a)(1)), graffiti vandalism (§ 594, subd. (b)(2)), and he admitted gang allegations for each count (§ 186.22, subds. (b) & (d)).

On March 19, 2013, the trial court suspended imposition of sentence and placed him on formal probation for 36 months. On June 25, 2014, Salas admitted he violated his probation conditions. The court sentenced him to state prison for two years eight months. It “suspended” execution of sentence and “reinstated” him on probation.

On April 2, 2015, Salas’s probation was revoked and he was sentenced to two years eight months in state prison. In January 2016, he was released from prison and placed on parole supervision. (§ 3000.08.)

On January 19, 2017, Salas’s parole agent filed a petition for revocation of parole alleging Salas failed to report to his parole unit.

At the parole violation hearing on June 6, 2017, Salas admitted he violated parole conditions by “absconding from parole supervision.” The trial court accepted this admission and found Salas violated his parole conditions.

Salas’s trial counsel told the trial court, “Your Honor indicated you would sentence [him] to 120 days consecutive. I’m going to object on his behalf to it being consecutive. I think

because it's a parole sentence the Court . . . doesn't have the authority to make it consecutive."

The trial court said, "I do not agree it's appropriate to run time concurrently. And I'm relying on the fact that he was absconding from parole in the month of November of 2016." The court noted that Salas was convicted of another felony offense that occurred in "October of 2016 before he absconded [from parole]." Salas claimed he was sentenced to two years in prison for that offense in a different criminal case. The court said, "[T]his petition really has nothing to do with that open felony matter [Salas's] parole is revoked and reinstated. And he is ordered to serve 120 days in the Ventura County jail consecutively to any time he is serving otherwise."

DISCUSSION

The Consecutive Sentence

Salas contends the trial court erred because it lacked authority to "impose consecutive time on a parole revocation [confinement period] to a determinate sentence in another criminal case." (Boldface omitted.) We agree.

Salas was released from state prison after July 1, 2013, and was "subject to parole supervision by the Department of Corrections and Rehabilitation and the jurisdiction of the court in the county in which . . . [an] alleged violation of supervision has occurred." (§ 3000.08, subd. (a).)

Section 3000.08, subdivisions (f) and (g) govern the court's authority after a person violates parole supervision conditions. It provides, in relevant part, "Upon a finding that the person has violated the conditions of parole, the court *shall have authority* to do any of the following: [¶] (1) Return the person to parole supervision with modifications of conditions, if appropriate,

including a period of incarceration in a county jail. [¶] (2) Revoke parole and order the person to *confinement* in a county jail.” (*Id.*, subd. (f), italics added.) “*Confinement* pursuant to paragraphs (1) and (2) of subdivision (f) shall *not exceed a period of 180 days in a county jail.*” (*Id.*, subd. (g), italics added.)

Salas notes that California law has carefully distinguished between “confinement” for parole violations and traditional “sentencing” for criminal convictions. (*People v. Mathews* (1980) 102 Cal.App.3d 704, 713.) Section 3000.08 expressly authorizes a county jail “confinement” period for a parole violation not to exceed 180 days. (*Mathews*, at p. 713.) Salas claims that “the Determinate Sentencing Law” does not allow a court to impose the type of consecutive sentence imposed here. We agree.

Section 669 governs concurrent and consecutive sentences. It provides, in relevant part, “When a person is convicted of *two or more crimes* . . . the second or other subsequent judgment upon which *sentence* is ordered to be executed shall direct whether the terms of imprisonment . . . shall run concurrently or consecutively.” (*Id.*, subd. (a), italics added.)

Salas contends section 669 does not authorize the court to impose a parole revocation confinement period to run consecutively.

The People claim “[s]ection 669 does not address the situation presented in this case.” They contend, “By its terms, section 669 applies when a person is convicted of ‘two or more *crimes*,’ and when ‘the second or other subsequent *judgment* upon which *sentence* is ordered to be executed.’” The People note that “the parties in this case agree that a term of custody for a parole violation does not constitute a ‘sentence’ for purposes of section 669.”

The People then claim section 669 should be construed to authorize the trial court to have the inherent authority to impose the consecutive sentence in this case. But this contention was rejected in *People v. Mathews*, *supra*, 102 Cal.App.3d at p. 713. In *Mathews*, the trial court, relying on section 669, ordered a “new term to run consecutive to a parole revocation period.” (*Ibid.*) The Court of Appeal struck the consecutive sentence. It determined there was no authority to impose such a sentence in combination with a parole revocation confinement period. It noted there is “a distinction between the *expiration of a term of imprisonment* as opposed to . . . *confinement on revocation of parole*.” (*Ibid.*, second italics added.) “Logically, when a person has served a determinate sentence and is reimprisoned upon revocation of parole, he has not returned to prison for the purpose of serving the balance of his original term.” (*Ibid.*) “Rather, [a person] is reimprisoned for the purpose of serving a maximum of 12 months for violating his parole.” (*Ibid.*) Applying *Mathews*, the consecutive sentence here is unauthorized.

Mathews was decided well before the realignment sentencing statutes. The People challenge its current applicability. The authors of the treatise on the realignment legislation conclude that *Mathews* applies to both post-realignment parole supervision violations and PRCS violations. (Couzens, Bigelow, Prickett, Sentencing Cal. Crimes (The Rutter Group 2017) Sentencing After Realignment, §§ 11:65, p. 11-107, 11:77, p. 11-139.) Citing *Mathews*, the authors state, “It is unlikely the court has the ability to impose a term in jail as a sanction for violation of parole, then impose a new substantive term consecutive to the parole term.” (*Id.*, § 11:77, at p. 11-139.) “It is unlikely the court has the ability to impose a term in jail as

a sanction for violation of PRCS, then impose a new substantive term consecutive to the PRCS term.” (*Id.*, § 11:65, at p. 11-107.) We agree with these conclusions. Some statutory procedures have changed, but these changes do not relate to the issue decided in *Mathews*. *Mathews*’s underlying principles are still applicable.

The People request us to depart from *Mathews* and interpret section 3000.08 so as to authorize courts to impose consecutive sentences. But section 3000.08 is unambiguous and does not contain a consecutive sentencing provision. *Mathews* was published decades ago. Had lawmakers intended to make an exception to the *Mathews* doctrine, they could have easily done so with express language in the realignment statutes. “Courts may not insert words or add provisions to an unambiguous statute.” (*Hudson v. Superior Court* (2017) 7 Cal.App.5th 1165, 1172.) “We may not rewrite the statute to conform to an assumed intention that does not appear in its language.” (*Id.* at p. 1173; see also *Vasquez v. State of California* (2008) 45 Cal.4th 243, 253.) The People’s request should be directed to the California Legislature.

DISPOSITION

The portion of the judgment imposing a consecutive sentence is stricken; as so modified, the judgment is affirmed.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

YEGAN, J.

PERREN, J.

Patricia M. Murphy, Judge
Superior Court County of Ventura

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