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

THE PEOPLE,

Plaintiff and Respondent,

v.

GUILLERMO GARCIA HERNANDEZ,

Defendant and Appellant.

B281787

(Los Angeles County
Super. Ct. No. SA077636)

APPEAL from the judgment of the Superior Court of
Los Angeles County, Harry Jay Ford III, Judge. Affirmed.

William L. Heyman, under appointment by the Court of
Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler,
Chief Assistant Attorney General, Lance E. Winters, Assistant
Attorney General, Scott A. Taryle, Deputy Attorney General,
for Plaintiff and Respondent.

The instant appeal presents a single issue: Did the trial court abuse its discretion when it found that defendant Guillermo Garcia Hernandez (defendant) had willfully violated a condition of formal probation requiring him to “[k]eep probation officer advised of [his] residence and work and home telephone numbers at all times.” Defendant had been deported to Mexico shortly after pleading no contest in 2011 to felony aggravated assault and being placed on three years’ formal probation. Defendant reentered the United States in 2017.

Because the evidence supports that defendant (1) was informed of the term of formal probation requiring him to advise the probation department of his residence address and work and home telephone numbers, and (2) had access in Mexico to means of communicating with the probation department; and that the latter term of probation was not “futile” even when defendant resided in Mexico, we conclude the trial court did not abuse its discretion and affirm.

PROCEDURAL AND FACTUAL SUMMARY

We base our factual recitation on the probation report. On May 15, 2011, Jose Garcia-Olivera (Garcia-Olivera) parked his car in the alleyway behind his apartment building. Defendant and three other men approached Garcia-Olivera and began arguing with him about his parking space. Garcia-Olivera called a friend for help. When the friend arrived, defendant punched Garcia-Olivera in the face, then struck Garcia-Olivera in the head with a bottle. Later on, Los Angeles police officers located and arrested defendant.

On July 14, 2011, defendant pled no contest to one count of assault by means of force likely to cause great bodily injury on

Garcia-Olivera. (Pen. Code, § 245, subd. (a)(1).)¹ The trial court placed defendant on formal probation for three years subject to various conditions, including that defendant serve 120 days in county jail, perform 25 days of graffiti removal, complete 26 sessions of anger management, keep his probation officer advised of his residence and work and home telephone numbers at all times, and make restitution to the victim in the amount of \$4,000 pursuant to section 1202.4, subdivision (f).

Defendant was in jail and subject to an immigration hold when he was sentenced to probation. The record does not disclose whether the trial court was aware of this immigration hold when it sentenced defendant. The record does contain a probation report stating that on July 18, 2011 defendant was released from county jail to the custody of United States Immigration and Customs Enforcement personnel and deported to Mexico on August 24, 2011.

On August 29, 2011, defense counsel informed the trial court that defendant had been deported and requested that defendant's probation be converted to "that without formal supervision." The request was denied. On October 3, 2011, the trial court summarily revoked defendant's probation, and issued a bench warrant.

On January 23, 2017, defendant was arrested in Calexico California after he crossed the border from Mexico into the United States. This was the first time defendant had returned to the U.S. since being deported. He was taken to a detention center in Imperial California and then transferred to Los Angeles, where there was an outstanding warrant for his arrest. Defendant was then booked into the Los Angeles County jail.

¹ Further undesignated statutory references are to the Penal Code.

The trial court held the probation revocation hearing on February 17, 2017. It noted the probation department's allegations of defendant's violation of several conditions of his formal probation, and defendant's denial of those allegations. Defendant testified he had been living in a small village in Mexico with his wife and child. He was employed there and earned about \$30 per week. He also had "two positions during two years to serve the community." There was no cellular telephone service in the village, and defendant did not have a cellular telephone. There was, however, one public telephone booth and defendant had access to "paper or postal or a pen."

At the conclusion of the revocation hearing, the trial court found that defendant violated probation when "he failed to report his whereabouts to keep the probation officer informed of his address and contact information." It noted that defendant could have contacted the probation department by letter or a telephone call from the village phone booth. The trial court concluded, "the violation I'm finding is that he failed to report his whereabouts to keep the probation officer informed of his address and contact information."

When defense counsel inquired whether defendant "was ever ordered to tell probation his whereabouts," the trial court responded "that was part of the orders. . . . It's definitely reflected in the minutes. And the minutes are presumed to be correct." The trial court acknowledged that it did not appear that the trial court that originally sentenced defendant had "specifically addressed what he should do if he [was] deported."

The trial court did not find any other violation of probation. Thus, the trial court stated that it was not finding defendant in violation of probation for "failing to physically report within

48 hours of his release from custody because he did not have the ability to control that, having been deported.” The court also stated that with respect to victim restitution, “I’m not satisfied that he is in violation of that condition. Thirty-five dollars a week, supporting a family, I just can’t find that is a violation.”

The trial court then terminated the probation that had been summarily revoked and resentenced defendant; it suspended sentence and granted him four years of formal probation. The conditions of probation included defendant’s serving a jail term of 180 days with credit for 165 days, defendant’s payment to the victim of \$4,000 in restitution, and the obligation to “notify the probation office of a mailing address and/or phone number where you can be reached in the country you’re deported to in order to keep the probation officer informed of your home address and telephone numbers at all times.”

Defendant filed a timely appeal.

DISCUSSION

Defendant claims he was not clearly advised that he had to keep his probation officer informed of his contact information even if he were deported, and thus any violation of that probation condition was not willful. He also argues that a condition that required him to report his location in Mexico “had no utility.”

A. Trial Court Has Broad Discretion to Revoke Probation when a Defendant Violates a Condition of Probation

A trial court is authorized to revoke 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 probation.’” (§ 1203.2, subd. (a);

People v. Rodriguez (1990) 51 Cal.3d 437, 440 (*Rodriguez*.) The standard of proof in probation revocation hearings is by a preponderance of the evidence. (*Rodriguez, supra*, 51 Cal.3d at p. 445.) The court may rely on the probation officer's report for proof of the defendant's failure to report to probation, to pay restitution, to attend counseling, and to provide proof of employment. (*People v. Gomez* (2010) 181 Cal.App.4th 1028, 1039.)

"We review the trial court's probation revocation order for an abuse of discretion. [Citations] The trial court's factual findings are reviewed for substantial evidence." (*People v. Butcher* (2016) 247 Cal.App.4th 310, 318.) "[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." [Citation.]" (*Rodriguez, supra*, 51 Cal.3d at p. 443.)

"While it is an abuse of discretion to revoke probation for conduct over which the probationer has no control (*People v. Cervantes* (2009) 175 Cal.App.4th 291, 295 . . . [inability of immigration detainee to appear for review hearing not willful]; *People v. Galvan* (2007) 155 Cal.App.4th 978, 982–984 . . . [because defendant was deported immediately following his release from county jail, his failure to report to probation department within 24 hours of release from county jail was not willful]), the mens rea standard in revocation proceedings is difficult to state with precision beyond that. (See [*People v. Zaring* (1992) 8 Cal.App.4th 362,] 379 [absent 'irresponsibility, contumacious behavior or disrespect for the orders and expectations of the court,' probationer's conduct was not willful].)" (*In re Kevin F.* (2015) 239 Cal.App.4th 351, 362–363 disapproved on other grounds by *People v. Hall* (2017) 2 Cal.5th 494.)

**B. Defendant Was Informed He Was Required to
Advise the Probation Department of His Location
“At All Times”**

Defendant questions the sufficiency of the record to show that he was advised of his probation conditions in open court because there is no reporter’s transcript of the July 14, 2011 hearing and the existing record is ambiguous. We disagree.

The minute order for July 14, 2011, lists the conditions of defendant’s probation, including “Keep probation officer advised of your residence and work and home telephone numbers at all times.” This entry is sufficient evidence that defendant was advised of this probation condition. (See *People v. Dubon* (2001) 90 Cal.App.4th 944 [minute order qualified as a record showing defendant was given some immigration advisements]; *In re Ian J.* (1994) 22 Cal.App.4th 833, 839 [detailed minute order can be an adequate substitute for a verbatim record].) Minute orders are presumed correct. (See *People v. Gaines* (1877) 52 Cal. 479, 480.)

To the extent defendant claims the minute order here may not be correct in light of the probation report, defendant is mistaken. The last two pages of that report consist of a preprinted list of possible probation conditions. The boxes next to some of the conditions are checked. As defendant points out, the box next to condition number 11 is not checked. That condition reads: “Maintain residence as approved by the Probation Officer and keep the Probation Officer advised of your work and home address and telephone number at all times.”

The last two pages of the report demonstrate that the report was merely preliminary. The line for restitution had “to be determined by the court” typed in. The box for line 12 was checked, requiring defendant to “support dependents as directed by the

Probation Officer” although there was nothing elsewhere in the probation report to indicate that defendant had any dependents at that time. Thus, nothing in these two pages calls into question the accuracy of the court’s July 14, 2011 minute order detailing the final conditions of probation.

Defendant further contends that even assuming the requirement to keep the probation department advised of his residence address and telephone numbers was accurately included in the minute order, that condition was not specific enough to inform him that he was required to keep the probation officer advised of his address if he were deported to Mexico. Defendant maintains the trial court acknowledged “that the court that had placed [defendant] on probation had apparently not addressed specifically what [defendant] should do if he was deported.”

Taken in context, the court’s statement does not demonstrate the trial court found that the reporting condition was ambiguous. The court’s full statement was: “I don’t see that the court specifically addressed what [defendant] should do if he is deported. I know some court’s will say ‘Don’t reenter illegally.’ If I am going to do that, I will likely do that here, unless you wish to be heard otherwise.” In resentencing defendant, the court stated, “If you are deported, I’m gonna make it a condition of your probation that you not reenter the United States illegally.”

We find the circumstances as a whole sufficient to inform defendant that he was required to keep the probation officer informed of his address no matter where defendant resided. Defendant was in jail and subject to an immigration hold at the time of the original sentencing hearing. Before defendant pled no contest, he was advised that if he was not a citizen, one of the consequences of conviction would be deportation. Deportation was

a real possibility; defendant's obligation to keep probation informed of his contact information was broadly framed—"at all times"—and was not limited to defendant's residing in the United States. Accordingly, there was no reason for defendant to believe he would be excused from compliance with this condition were he deported.

Finally, we conclude that substantial evidence supported the trial court's finding that defendant willfully violated this term of his probation. The supplemental probation report prepared for the 2011 summary revocation hearing disclosed that defendant did not advise the probation department of his residence address or telephone numbers; defendant did not offer any evidence demonstrating that he reported at any time thereafter. As set forth above, there was substantial evidence that defendant was aware of the requirement of his probation to provide the probation department with his residence address and telephone numbers and that defendant had access to means of communicating with the probation department while he resided in Mexico. He just failed to do so. We conclude there was sufficient evidence to support the trial court's finding that defendant willfully violated this term of his probation.

C. The Probation Requirement Was Not Futile

Defendant contends the probation condition had no utility because the probation officer had no jurisdiction over defendant in Mexico, and defendant had no ability to comply with the conditions of his probation while in Mexico.

Even if *arguendo* a probation officer would not have had jurisdiction over defendant while he was in Mexico, defendant did not stay in Mexico. Once defendant returned to the United States, the probation department had jurisdiction and the trial court could

properly hold defendant accountable for his failure to comply with the terms of probation.

At the revocation hearing, the trial court observed “there is nothing that prohibits the defendant, who has been given a grant of leniency through probation, who has been deported from finding a way to contact the probation officer.” Had defendant done so, the court further observed, arrangements could have been explored to do community service in Mexico, to meet his financial conditions of probation, or to satisfy the anger management condition. Instead, defendant “kept [the probation officer] in the dark.”

As it was, upon resentencing, the trial court took into account the possibility that defendant could be deported again in removing the anger management and graffiti conditions that had been part of the previous grant of probation. Also, after defendant testified about his limited income, the trial court stated that it could not find a willful violation of defendant’s obligation to make restitution. Thus, the record does not support defendant’s conjecture that providing the probation department with defendant’s contact information would have served no purpose.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

BENDIX, J.*

We concur:

Rothschild, P. J.

Chaney, J.

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