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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.

ORLANDO HINKSTON,

Defendant and Appellant.

B280388

(Los Angeles County Super. Ct. No. BA406481)

APPEAL from a judgment of the Superior Court of Los Angeles County. Henry J. Hall, Judge. Affirmed.

Ken K. Behzadi, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Orlando Hinkston appeals from the October 31, 2016 judgment, revoking probation. Following our independent examination of the entire record pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), we conclude no arguable issues exist. Accordingly, we affirm.

PROCEDURAL AND FACTUAL HISTORY A. June 2015 Probation Revocation

On August 13, 2013, Hinkston, who was representing himself, entered a plea of guilty to possessing cocaine base for sale in exchange for the court's striking his prior felony conviction, imposing and suspending a five-year prison sentence, and placing him on formal probation for three years. One probation condition was that Hinkston "obey . . . all rules, regulations, and instructions of the probation officer." He failed to report to probation, and a desertion report, submitted March 17, 2015, shows: (1) Hinkston failed to report to probation as instructed, (2) failed to attend court-ordered drug treatment and rehabilitation program meetings, (3) failed to keep the probation officer advised of his residence at all times, (4) failed to pay his financial obligations, (5) failed to register as a narcotics offender, and (6) had access to weapons on multiple occasions.

On May 21, 2015, at a probation violation hearing at which Hinkston represented himself, Los Angeles County Deputy Probation Officer Christopher Mendiola testified that Hinkston did not report on specific dates as instructed, and Hinkston failed to give the probation office a working telephone number where he could be reached. On June 18, 2015, the court determined that Hinkston had violated probation and ordered Hinkston to serve two of the five years the court had previously imposed but stayed, with Hinkston to be on mandatory supervision for the remaining

three years. Hinkston was given credit for 442 actual days in custody.¹

B. May 2016 Probation Revocation

On October 24, 2015, Hinkston was released on mandatory supervision. On November 3, 2015, he reported, but told the probation officer that he planned to leave California for Ohio to visit his family. Hinkston refused to provide an address or telephone contact number. Thereafter, Hinkston reported sporadically. On May17, 2016, the court revoked and then reinstated supervised probation. The court found Hinkston in violation of probation, ordered him to serve 66 days in jail with the same number of days awarded as credit, so that he was released. The court stated that the mandatory supervision period would expire on December 17, 2018.

C. October 2016 Probation Revocation

On August 3, 2016, the court revoked mandatory supervision and issued a bench warrant. On September 19, 2016, the court recalled the bench warrant, remanded Hinkston, and set a probation violation hearing.

The probation officer's report submitted for the October 2016 hearing showed that Hinkston had not reported for months, since June 21, 2016; had not made a payment for over two years, since June 13, 2014; and had failed to register as a narcotics offender.

At the October 31, 2016 violation hearing, a deputy public defender represented Hinkston. Supervising Deputy Probation

Hinkston appealed. Via opinion filed on March 16, 2017 (B265925), we affirmed the court's revocation of probation.

Officer Kenneth Jew testified that Hinkston last reported to the probation office on June 21, 2016. Hinkston also failed to make his scheduled restitution payments. Deputy Jew testified that records show that, on July 13, 2016, Hinkston telephoned the probation office to explain that he did not make his payments as he had staples removed from his head. When Officer of the Day Mendez asked Hinkston if he had his discharge papers, Hinkston answered, "'I threw that shit away, homie. You want me to keep [expletive] running?'" Deputy Mendez transferred the call to Deputy Jew; Hinkston continued to use profanity and threatened "to whoop" a staff member.

Hinkston testified that he was unable to report for the July 6, 2016 appointment, because he had been shot in the back of his head and was hit with a 12-inch crowbar; he was "laid up" for seven or eight days. At some point after July 6, Hinkston telephoned the probation office to make another appointment and to ask that the bench warrant be recalled, but the officer refused both requests. The officer told Hinkston to bring his medical records with him to court. However, Hinkston, who was in a wheelchair, did not submit any hospitalization or medical records at the hearing.

Hinkston's record confirmed his testimony that he registered as a narcotics offender.

Deputy Jew was recalled as a witness; he testified that, prior to July 2016, Hinkston last reported on November 3, 2015, and was arrested on April 15, 2016. Hinkston was released on June 21, 2016, at which time probation officers transported him to the office. He was scheduled to report on July 6, 2016, but did not do so; however, he did call in on July 13, 2016.

The court found that Hinkston was not credible and pointed out that when the deputy asked Hinkston for his hospital records, Hinkston became verbally abusive. The court recounted Hinkston's previous failures at probation, as well as his verbal abuse of probation staff. The court imposed the remainder of his five-year sentence, with a credit of 1,151 actual and good time/work time days. The court imposed a \$280 probation revocation fine (Pen. Code, § 1202.44); a \$280 restitution fine (Pen. Code, § 1202.4, subd. (b)); a \$30 criminal conviction fine/facilities assessment (Gov. Code, § 70373, subd. (a)); a \$40 court security fee (Pen. Code, § 1465.8, subd. (a)(1)); and a \$50 crime lab fee plus penalty assessment (Health & Saf. Code, § 11372.5).

Hinkston timely appealed.

DISCUSSION

After review of the record, Hinkston's court-appointed appellate counsel filed an opening brief, asking this court to review the record independently pursuant to *Wende*, *supra*, 25 Cal.3d 436. We advised Hinkston that he had 30 days within which to submit any contentions or issues that he wished us to consider. Hinkston has not filed a supplemental brief.

A court may revoke probation when one or more condition is violated. (Pen. Code, § 1203.2, subd. (a).) A probation violation must be willful to justify revocation of probation. (People v. Rodriguez (2013) 222 Cal.App.4th 578, 594; People v. Galvan (2007) 155 Cal.App.4th 978, 982.) We give great deference to the trial court and resolve all inferences and intendments in favor of the judgment. Similarly, all conflicting evidence will be resolved in favor of the decision. (People v. Kurey (2001) 88 Cal.App.4th 840, 848–849.) Moreover, we review the trial court's finding that

Hinkston violated probation, and the court's decision to revoke probation, for abuse of discretion. (*People v. Rodriguez* (1990) 51 Cal.3d 437, 443.) It is Hinkston's burden to establish that the court abused its discretion in revoking probation. (*Id.* at p. 442.)

Hinkston testified that a probation officer instructed him to bring his hospital or other medical records to the July 6, 2017 probation violation hearing. He did not do so and, thus, failed to support his claim that physical injuries prevented him from reporting. Given that Hinkston has an undisputed history of failing to report and the court found that he was not credible, substantial evidence exists from which the trial court could have found by a preponderance of the evidence that Hinkston's failure to report was willful.

We have examined the entire record and are satisfied that no arguable issues exist, and that Hinkston has, by virtue of counsel's compliance with the *Wende* procedure and our review of the record, received adequate and effective appellate review of the judgment entered against him in this case. (*Smith v. Robbins* (2000) 528 U.S. 259, 278; *People v. Kelly* (2006) 40 Cal.4th 106, 112-113.)

DISPOSITION

The judgment is affirmed.

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		DHANIDINA, J.*
We concur:		
	EDMON, P. J.	
	LAVIN, J.	

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