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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

RONALD WAYNE HILL,

Defendant and Appellant.

B263482

(Los Angeles County
Super. Ct. No. 5PH01279)

APPEAL from an order of the Superior Court of Los Angeles County, Donald S. Kennedy, Commissioner. Reversed.

Heather E. Shallenberger, 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, Scott A. Taryle and Russell A. Lehman, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Ronald Wayne Hill appeals from a postjudgment order revoking and reinstating parole on condition he serve 160 days in county jail. The order was based on the court's finding Hill had interfered with a police investigation. We conclude the evidence is insufficient to support the finding and reverse the order.

FACTUAL AND PROCEDURAL BACKGROUND

Hill was sentenced to a three-year prison term following his 2012 conviction for assault with a firearm (Pen. Code, § 245, subd. (a)(2)).¹ He was released on parole on February 6, 2014. After being returned to prison for multiple parole violations, Hill was again released on parole on February 11, 2015.

On February 19, 2015, Hill was arrested by Los Angeles County sheriff's deputies for resisting arrest within the meaning of section 148, subdivision (a)(1).² Hill's parole agent petitioned to revoke Hill's parole pursuant to section 3000.08. The petition alleged Hill had violated the terms of his parole by failing to report to his parole agent and resisting arrest. At his arraignment, Hill denied the allegations.

At the contested hearing on March 30, 2015, the People elected to proceed only on the resisting arrest allegation. The arresting officer, Deputy Brian Rogge, was the sole witness for the People. Deputy Rogge testified that on February 19, 2015, he responded to a report of a disturbance at the Artesia Metro Transit Station. He encountered Hill yelling and screaming while pacing the area between the ticket vending machines and the

¹ All further statutory references are to the Penal Code.

² The elements of a violation of section 148, subdivision (a)(1), are ““(1) the defendant willfully resisted, delayed, or obstructed a peace officer, (2) when the officer was engaged in the performance of his or her duties, and (3) the defendant knew or reasonably should have known that the other person was a peace officer engaged in the performance of his or her duties.” [Citation.]” (*Yount v. City of Sacramento* (2008) 43 Cal.4th 885, 894-895.)

turnstiles. Some commuters waited for Hill to walk away from the turnstiles before entering the platform.³

After explaining to Hill that his behavior was scaring people, Deputy Rogge attempted to escort Hill to his patrol car. Hill refused to comply, and Rogge radioed for assistance. Two deputies arrived, and together the three deputies handcuffed Hill following a brief struggle. Once he was handcuffed, Hill lay down on the ground and refused to stand up. The deputies summoned a sergeant, who assisted them in placing Hill inside a patrol car.

Hill did not testify or present other evidence in his defense.

At the conclusion of the hearing, Hill's counsel moved to dismiss the petition on grounds there was no evidence either of Hill's parole status or of the condition Hill had purportedly violated. The trial court denied the motion but found there was no evidence that Hill had resisted a lawful arrest. However, the court found the evidence showed Hill had violated his parole by interfering with a police investigation at the scene and revoked and reinstated parole with a modified condition that Hill serve 160 days in county jail.

Hill filed a timely notice of appeal, challenging the order revoking and reinstating his probation. Although Hill's appellate counsel submitted a brief in which no issue was raised pursuant to *People v. Kelly* (2006) 40 Cal.4th 106 and *People v. Wende* (1979) 25 Cal.3d 436, we requested supplemental briefing on whether the evidence was sufficient to support the trial court's finding that Hill's conduct of interfering with a police investigation violated the terms and conditions of his parole.

DISCUSSION

A finding that a parolee has violated parole must be based upon proof by a preponderance of the evidence. (*People v. Rodriguez* (1990) 51 Cal.3d 437, 440.) Hill

³ The person who reported the disturbance did not wish to be contacted by law enforcement.

contends, the People concede, and we agree, there was insufficient evidence to support the finding Hill violated his parole.

When a parolee violates parole and the supervising agency, here the Department of Corrections and Rehabilitation (DCR), elects to proceed with revocation of parole, section 3000.08 requires the DCR to petition the court in the county in which the parolee is being supervised. (§ 3000.08, subd. (f).) “The petition shall include a written report that contains additional information regarding the petition, including the relevant terms and conditions of parole, the circumstances of the alleged underlying violation, the history and background of the parolee, and any recommendations.” (*Ibid.*; see Cal. Rules of Court, rule 4.541(c)(2) [petition for revocation must include written report containing all relevant terms and conditions of supervision]; *People v. Osorio* (2015) 235 Cal.App.4th 1408, 1413 [same].) Upon a finding the parolee has violated the terms and conditions of parole, the court has several options, among them, returning the parolee to parole supervision with modifications of conditions, including incarceration in county jail. (§ 3000.08, subd. (f).)

In this case, the DCR’s petition failed to include the terms and conditions of Hill’s parole. Furthermore, as Hill’s counsel argued to the trial court, no evidence of the terms and conditions of Hill’s parole was introduced at the hearing. In the absence of this evidence, the finding that Hill violated his parole by interfering with a police investigation must be reversed.

DISPOSITION

The order finding that Hill violated the terms and conditions of his parole is reversed.

GARNETT, J.*

We concur:

PERLUSS, P. J.

ZELON, J.

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