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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.

DEBRAH RAE BOE,

Defendant and Appellant.

2d Crim. No. B297218
(Super. Ct. No. 2018016707)
(Ventura County)

Debrah Rae Boe appeals a judgment following her guilty plea to first degree residential burglary (Pen. Code, § 459), a felony. “[I]mposition of sentence” was “suspended” and Boe was placed on probation. She violated probation. The trial court sentenced her to four years in state prison, suspended the execution of that sentence, and reinstated probation. Following another probation violation, the court imposed the four-year state prison sentence. We affirm.

FACTS

On May 16, 2018, Richard Zepf left his home to make a delivery. He left the door to his basement unlocked. He returned

later and saw Boe in his driveway. She was “hunched over a silver pull cart.” The cart was “full of property, which she had covered with a pink blanket.”

Zepf went to his basement and saw that certain items were missing. He called the police.

The police located Boe three blocks from Zepf’s residence. The silver cart she was pushing contained a violin, a saxophone, Nike shoes, “several smaller instruments,” and a “cupie” lamp. Boe said she found those items in a trash can.

The police transported Boe to Zepf’s location for “an infield” identification. Zepf identified her as the person he saw in his driveway and said the items in Boe’s cart belonged to him. Boe was arrested.

On June 18, 2018, Boe pled guilty to burglary. The probation department filed a report stating, “[Boe] has an extensive history consisting primarily of substance abuse and theft, which dates back nearly thirty years. The present matter represents her *third felony conviction*, her fourth theft-related conviction, and *her second conviction for burglary*. . . . [¶] Boe “has had the previous benefit of community based supervision, along with substance abuse treatment, but appears to have made *no measurable progress toward rehabilitation*. [H]er criminal activity is becoming increasingly *brazen and dangerous*.” (Italics added.) It recommended that Boe be sentenced to state prison. The trial court placed her on probation.

On September 4, 2018, the probation department filed a notice of charged violations of probation, stating Boe did not regularly report to the probation officer and did not submit “to testing for controlled substances, due to her failure to report to probation.” Boe was walking without pants and was transported

to a hospital where she “tested non-negative for methamphetamine.” Boe sent a letter to the probation department stating she “was accepted” in the “Light House Program.” A probation officer went to that program, but learned Boe was not in the program. “On 8-15-18, [Boe] failed to appear in Court[;] a bench warrant was issued for her arrest.”

The probation department said that Boe had a “lengthy criminal history.” It said, “The Court afforded her an opportunity to redirect her lifestyle under probation’s supervision; however, the fact that she absconded upon her release from custody is indicative that *she has no intention to abide by the Court’s orders and probation’s directives. Therefore, a commitment to the California Department of Corrections and Rehabilitation is warranted and respectfully recommended.*” (Italics added.)

On October 3, 2018, Boe admitted committing the probation violations. The trial court imposed a four-year sentence, suspended execution of that sentence, and reinstated probation. Boe was ordered to be “immediately transported” to the Lighthouse Residential Treatment Program (Lighthouse) and was ordered to participate in that program. The court told Boe, “You are ordered to remain in the program unless you are allowed to withdraw by probation.”

A month later the probation department filed another notice of charged probation violations stating Boe possessed a methamphetamine pipe. Boe changed her residence without prior approval and did not participate as required at Lighthouse. The probation department said, “The present matter represents the defendant’s *second violation of probation. Although probation recommended a prison recommendation for her first violation of probation, on 10-3-18, the Court gave the defendant a last*

opportunity to redirect her criminal behavior under probation's supervision." (Italics added.)

At the hearing on the cited probation violations, Police Officer William Griffin testified that in a probation search Boe possessed "a meth pipe." Boe said the pipe was hers. He asked her "what she used to smoke out of the pipe." She answered, "methamphetamine."

Probation Officer Naydeen Fish testified Boe violated her probation terms. Boe left Lighthouse without "probation approval." She violated probation by possessing a meth pipe. Boe went to the Total Life Christian Center (TLCC), but the trial court did not order her to go there. She was ordered to go to Lighthouse.

Boe testified she left Lighthouse because there were gang members there that she was not allowed to associate with. She went to TLCC. She felt she was in compliance by leaving Lighthouse and going to TLCC. She had the meth pipe, but she "didn't use it" for methamphetamine. She "wasn't using it at that time."

The trial court ruled Boe violated her probation conditions. It found that she had two probation violations in less than one year. She had opportunities for treatment, but she is "not taking that seriously." She "has had chances," but she is not making progress. She has been on probation "a lot over the past ten years." It revoked her probation and sentenced her to four years in state prison.

DISCUSSION

Abuse of Discretion

Boe contends the trial court abused its discretion in revoking probation and sentencing her to state prison. She claims it erred by not reinstating probation. We disagree.

“A grant of probation is not a matter of right; it is an act of clemency designed to allow rehabilitation.” (*People v. Chandler* (1988) 203 Cal.App.3d 782, 788.) “When the evidence shows that a defendant has not complied with the terms of probation, the order of probation may be revoked at any time during the probationary period.” (*Ibid.*)

“A probation violation does not automatically call for revocation of probation and imprisonment.” (*People v. Bolian* (2014) 231 Cal.App.4th 1415, 1420.) “The power to modify probation necessarily includes the power to reinstate probation.” (*Ibid.*) “The decision whether to reinstate probation or terminate probation (and thus send the defendant to prison) rests within the broad discretion of the trial court.” (*Id.* at p. 1421.) “On appeal, we presume that the trial court followed established law and thus properly exercised its discretion in sentencing a criminal defendant.” (*People v. Weddington* (2016) 246 Cal.App.4th 468, 492.) “A heavy burden is placed on a defendant in attempting to show an abuse of discretion in denying a request for probation.” (*People v. Marquez* (1983) 143 Cal.App.3d 797, 803.) “ “[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. . . .” ’ ” (*People v. Urke* (2011) 197 Cal.App.4th 766, 773.)

Boe has not shown that the trial court erred by revoking her probation. She violated the court’s order that prohibited her

from leaving Lighthouse without prior permission and she possessed a meth pipe. She committed two recent probation violations in less than one year. “Where a defendant fails to comply with conditions of probation, a court does not abuse its discretion in revoking the order granting probation” (*People v. Bookasta* (1982) 136 Cal.App.3d 296, 301.)

Boe notes that she testified she believed she was in compliance by going to TLCC. But she was ordered to stay at Lighthouse, and the credibility of her testimony was a matter for the trial court to resolve.

The trial court also did not abuse its discretion by deciding not to reinstate probation. In deciding whether reinstatement of probation is appropriate, the trial court considers such factors as the nature of the crime, a defendant’s prior criminal record, prior performance on probation, willingness to comply with probation terms, and public safety. (Cal. Rules of Court, rule 4.414(a) & (b); *People v. Harris* (1990) 226 Cal.App.3d 141, 146; see also *People v. Downey* (2000) 82 Cal.App.4th 899, 910.)

Boe committed a serious crime – residential burglary. Except in “unusual cases,” there is a statutory “discretionary prohibition against probation for defendants who are convicted of residential burglary.” (*People v. Aubrey* (1998) 65 Cal.App.4th 279, 282; § 462, subd. (a).) Boe consequently received a significant benefit by initially being placed on probation.

Boe’s criminal history and her prior performance on probation were not favorable factors supporting her claim that probation should have been reinstated. Her criminal record extends back “nearly thirty years.” Her latest conviction was her “third felony conviction, her fourth theft-related conviction, and her second conviction for burglary.” She had two recent

probation violations and her prior performance on probation was unsatisfactory. The probation department noted that Boe had used “eleven different alias names” to “thwart” the “detection of her true criminal history,” and that it was “extremely difficult to supervise [her] in the community.” She was on probation when she committed her recent residential burglary offense.

Boe suggests the trial court should have treated her in a similar manner to a Proposition 36 defendant because of her substance abuse history. But, as Boe concedes, she is not eligible for Proposition 36 relief because that applies to defendants convicted of a “nonviolent drug possession offense.” (*People v. Goldberg* (2003) 105 Cal.App.4th 1202, 1206.) Boe was convicted of residential burglary.

Boe claims the trial court erred by not considering rehabilitation and treatment as an alternative to prison. But the court considered her drug abuse problem and her history in rehabilitation programs. It said, “I think about the struggle that I know you’ve been dealing with for a really long time.” But it noted Boe had been on probation “a lot over the past ten years.” It found she has had opportunities for treatment, but she is “not taking that seriously.” She “has had chances,” but she is not making progress. The probation department confirmed that her “substance abuse treatment” did not lead to “measurable progress toward rehabilitation.” It noted Boe’s criminal activity is becoming increasingly “brazen and dangerous.” The court said it had to consider the “potential victims of [her] behavior,” as well as her criminal history. The probation department stated her “prior convictions are numerous.”

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

PERREN, J.

TANGEMAN, J.

Ronda J. McKaig, Judge

Superior Court County of Ventura

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