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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, v. DALLAS D. ROSE, Defendant and Appellant.	B285423 (Los Angeles County Super. Ct. No. 7PH03297)

APPEAL from an order of the Superior Court of Los Angeles County, Robert M. Kawahara, Judge. Affirmed.

Heather E. Shallenberger, 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, Senior Assistant Attorney General, Zee Rodriguez, Acting Supervising Deputy Attorney General, and Theresa A. Patterson, Deputy Attorney General, for Plaintiff and Respondent.

INTRODUCTION

Defendant Dallas D. Rose appeals the revocation of his parole based on his failure to charge his GPS monitoring device and failure to report to the California Department of Corrections and Rehabilitation, Division of Adult Parole Operations (the Department).[1] Defendant asserts that the Department failed to prove with admissible evidence that he had a conviction requiring ankle monitoring. Defendant argues that the Department used inadmissible hearsay to prove the underlying out-of-state rape conviction. We affirm because the Department had discretion to require electronic monitoring, regardless of whether defendant had been previously convicted of rape.

FACTS AND PROCEDURAL BACKGROUND

1. Convictions and Release on Parole

On June 4, 2014 in Los Angeles Superior Court, defendant was convicted of assault by means of force likely to produce great bodily injury and sentenced to two years in state prison. On May 16, 2015, the Department released defendant on parole. Prior to his release, defendant signed and initialed a document agreeing to the parole terms and conditions, including special conditions. One of the special conditions was that defendant wear a continuous electronic monitoring device on his ankle, which used GPS to track his location. Defendant was required to charge the device twice a day for one hour. It appears that impetus for the Department's imposition of the GPS monitoring parole condition was defendant's 1985 rape conviction from Pennsylvania.

Defendant's parole agent reviewed these terms and conditions, including the device charging requirement, with defendant many times. On July 21, 2017, the parole agent placed

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[1] A third ground for revocation—failure to register as a sex offender under Penal Code section 290—was dismissed.

the most recent GPS ankle bracelet on defendant and explained to defendant that he had to charge it for at least one hour, twice a day.

2. Violation of Parole Terms

On July 24, 2017, defendant failed to charge his GPS monitoring device. The parole agent received notifications that defendant had allowed the bracelet to go into low battery status, then critical battery status, and finally dead battery status. When the device went into low, critical, and dead battery status, it vibrated to alert defendant about the diminishing battery charge.

The parole agent responded by searching for defendant and the GPS device, but found neither. After defendant's GPS device died, he did not report to the parole office.

3. Parole Revocation

The following month, on August 14th, the Department filed a petition to revoke defendant's parole. At the initial hearing, defendant's attorney warned the court and the Department that defendant was not going to submit to the court's jurisdiction without the Department showing that the electronic monitoring was based on defendant's conviction for a sex offense.[2] The defense attorney required "some confirmation that's admissible in court as to his underlying [rape] conviction from Pennsylvania." Defendant's attorney asserted that "there has to be a prove-up that there's a conviction that requires -- that requires that [defendant] participate in GPS and register, and [defendant is] asking that the People prove that up through a certified docket from [the Pennsylvania] court."

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[2] Penal Code, section 3010.10 mandates electronic monitoring for sex offenders.

On August 24, 2017, the trial court held the probable cause hearing and heard testimony from a parole agent regarding the terms and conditions of defendant's parole and defendant's failure to charge his GPS monitoring bracelet. Referencing defendant's criminal history print out from the California Law Enforcement Telecommunication System (CLETS), the parole officer testified that defendant's 1985 Pennsylvania conviction for rape was the basis for requiring him to have the monitoring device pursuant to Penal Code, section 290. The trial court found probable cause to revoke defendant's parole.

On September 20, 2017, the court held the formal parole revocation hearing. Defendant's parole agent testified about defendant's conditions of parole and failure to charge the electronic monitoring device. He stated defendant had an electronic monitoring device as a condition of his parole because of his Pennsylvania rape conviction. The parole agent testified that defendant's CLETS criminal record displayed the rape conviction. In response to defendant's hearsay objections, the Department laid foundation for the CLETS documents with the parole agent's testimony that law enforcement is the custodian of the CLETS records and that the events described in CLETS are entered shortly after their occurrence. The parole agent testified that the CLETS documents were reliable and that parole agents rely on these documents.

The court overruled defendant's hearsay objection, stating that the Department was not required to produce a certified copy of the conviction "so long as there's testimony as to the foundation in that the court finds it as reliable. The witness has testified that he recognized this document as a CLETS document that [parole agents] do use [CLETS records] in their business and practice. And based on that, the court finds the document as reliable as can be used." At the close of evidence, defense counsel

argued that the Department's "failure to prove a sex violation indicates that he is not required to participate in GPS, and the evidence presented in that regard is insufficient."

The court found that defendant violated parole by failing to maintain his GPS tracking device and failing to report to the Department. The court revoked parole, ordered defendant to serve 180 days in county jail, and ordered parole to be reinstated upon defendant's completion of the jail time.

DISCUSSION

There is no dispute that the Department imposed electronic monitoring as a condition of defendant's parole, defendant agreed to wear and maintain the monitoring device while on parole, and defendant failed to charge his monitoring device. Defendant's tack is to assert that the court relied on inadmissible hearsay to prove that the electronic monitoring condition was required by statute. Defendant's argument assumes, without citation to any authority for the principle, that the Department was required to prove the underlying conviction for rape in order to justify its imposition of the electronic monitoring parole condition.

Section 3010 specifically authorizes "the Department of Corrections and Rehabilitation [to] utilize continuous electronic monitoring to electronically monitor the whereabouts of persons on parole." (Pen. Code, § 3010.)[3] Section 3010.5 vests the Department with "sole discretion" to decide which parolees shall be tethered to GPS devices.[4] Although section 3010.10 mandates electronic monitoring for sex offenders, the statutory scheme does not limit electronic monitoring to such offenses. Having found

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[3] All subsequent statutory references are to the Penal Code.

[4] We have no occasion to consider whether the Department abused its discretion as defendant has not made such an argument.

that "continuous electronic monitoring has proven to be an effective risk management tool for supervising high-risk persons on parole who are likely to reoffend where prevention and knowledge of their whereabouts is a high priority for maintaining public safety," (§ 3010, subd. (e)) the Legislature gave the Department of Corrections and Rehabilitation "the sole discretion to decide which persons shall be supervised using continuous electronic monitoring administered by the department." (§ 3010.5.) Here, the Department exercised its discretion in deciding to supervise defendant with a monitoring device. Contrary to defendant's contentions, the Department was not required justify the electronic monitoring with admissible evidence of a prior rape conviction in order to revoke parole, even assuming the CLETS printout was hearsay.

In response to our Government Code letter on this issue, defendant argues that "if the trial court disagrees with the imposition of a condition because it is either unconstitutional or invalid, the discretion of the trial court trumps that of the Department. . . . [T]he prosecution bore the burden of proof at the contested revocation hearing to show that [defendant] was subject to this particular condition even though it was imposed by the Department." For support, defendant cites *People v. Cruz* (2011) 197 Cal.App.4th 1306, 1311, (*Cruz*), which held that at a *probation* revocation hearing, the trial court has the authority to decide whether GPS monitoring should be a condition of a defendant's probation.

Cruz is inapt because it addresses probation conditions, not parole conditions. The trial court's authority varies fundamentally as between probation and parole. "A defendant may be granted probation only by judicial determination, and probation is subject to judicial revocation. By contrast, parole is mandatory in determinate sentences. The Board of Parole

Hearings has jurisdiction over parole, and administrative law is applicable to parole decisions." (Levinson, Cal. Criminal Practice (The Rutter Group 2017) ¶ § 31:3.) Obviously it is the trial court that imposes probation conditions in the first instance.

"The power to grant parole, including setting parole conditions, is vested in the Board [of Prison Terms,[5]] not the courts. The Board has expansive authority to impose any parole conditions deemed proper. '[T]he parolee's commission of a crime "justifies imposing extensive restrictions on the individual's liberty." ' The power to grant and revoke parole is vested in the Board, not the courts; thus the proper function of the courts with respect to parole and parole revocation is simply to ensure that the prisoner is accorded due process. Although the courts have the power to pass on the constitutionality or validity of parole conditions and may require their modification, it is for the Board to decide the precise scope and terms of modified parole conditions." (*Kevin R. v. Superior Court, supra,* 191 Cal.App.4th at pp. 684–685 [citations omitted].)

A prisoner must exhaust his administrative remedies before seeking relief from his parole conditions in the courts. (*In re Muszalski* (1975) 52 Cal.App.3d 500, 503.) To the extent defendant's arguments could be construed as a challenge to the conditions of his parole, specifically the Department's discretion to require GPS monitoring, he must first address these

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[5] "The Board of Prison Terms is an 'executive parole agency' that is an arm of California Department of Corrections and Rehabilitation." (*Kevin R. v. Superior Court* (2010) 191 Cal.App.4th 676, 681, n. 2.)

administratively before arguing the issue to the trial court. (*In re Hudson* (2006) 143 Cal.App.4th 1, 7.)[6]

DISPOSITION

The order is affirmed.

RUBIN, Acting P.J.

WE CONCUR:

GRIMES, J.

ROGAN, J.*

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[6] Because we uphold the parole revocation finding, we need not address defendant's argument that defendant's release from county jail does not render his appeal moot.

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