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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.

DOMINGO ANTHON CERVANTES,

Defendant and Appellant.

2d Crim. No. B281318
(Super. Ct. No. 2012034793)
(Ventura County)

Domingo Anthon Cervantes appeals a judgment the trial court imposed after it revoked his postrelease community supervision (PRCS). (Pen. Code, §§ 3451, 3455.)¹ The court imposed a 180-day period of confinement for Cervantes’s PRCS violation to run “*consecutive* to any other sentence.” (Italics added.) We conclude, among other things, that the court lacks authority to run a period of confinement for a PRCS violation consecutively to a sentence in another criminal case. The portion

¹ All statutory references are to the Penal Code.

of the judgment imposing a consecutive sentence is stricken; as so modified, we affirm.

FACTS

Cervantes was charged with 1) actively participating in a criminal street gang which had been engaged in “felony criminal conduct by gang members”; 2) being a felon in possession of a “Ruger .45” firearm; and 3) “unlawfully” resisting and obstructing a “peace officer,” who was attempting to perform his duties.

In November 2012, Cervantes pled guilty to street terrorism (§ 186.22, subd. (a)) (count 1); possession of a firearm by a felon, a felony (§ 29800, subd. (a)(1)) (count 2); and resisting a peace officer (§ 148, subd. (a)(1)) (count 3). The trial court sentenced him to two years in state prison on count 2. On counts 1 and 3, it imposed a 90-day sentence to be served “[c]oncurrent with Count 2.”

On February 26, 2014, Cervantes was released from prison and placed on PRCS.

On December 29, 2016, the Ventura County Probation Agency petitioned to revoke Cervantes’s PRCS. It alleged that he failed to report to his probation unit, he was suspected of committing various crimes, and he had “numerous outstanding warrants.”

On March 9, 2017, Cervantes appeared in court and admitted that he violated his PRCS conditions. The court accepted his admission and said, “[The Court] finds [Cervantes] in violation. The Court imposes 180 days in any penal institution. That will be consecutive to any other sentence.” At the time of sentencing, Cervantes was serving a 44-month sentence for convictions in other criminal cases.

DISCUSSION

The Consecutive Sentence

Cervantes, the People and we agree that the trial court lacked authority to impose Cervantes's PRCS revocation confinement consecutive to a determinate sentence in another criminal case. *People v. Garcia* (May 2, 2018, B282787) _ Cal.App.5th _ [2018 Cal.App. LEXIS 391] explains why the consecutive sentence was unauthorized.

DISPOSITION

The portion of the judgment imposing a consecutive sentence is stricken; as so modified, the judgment is affirmed.

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GILBERT, P. J.

We concur:

YEGAN, J.

PERREN, J.

Michael S. Lief, Judge
Superior Court County of Ventura

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