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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

DEANTE DUCKETT,

Defendant and Appellant.

B232171

(Los Angeles County
Super. Ct. No. TA111768)

APPEAL from an order of the Superior Court of Los Angeles County. Kevin L. Brown, Judge. Affirmed.

Lenore De Vita for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Paul M. Roadarmel, Jr. and Nima Razfar, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Deante Duckett (defendant) appeals from the order revoking his probation and sentencing him to four years in prison after the trial court found him in violation of the terms of his probation. We affirm the trial court's order.

BACKGROUND

1. Conviction and Probation

In a five-count felony complaint, the Los Angeles County District Attorney charged defendant with one count of attempted unlawful sexual intercourse with a minor (Pen. Code, §§ 261.5, subd. (d), 664; count 1),¹ two counts of sexual penetration by a foreign object (§ 289, subd. (i); counts 2 and 4), and two counts of unlawful sexual intercourse with a minor (§ 261.5, subd. (d); counts 3 and 5).²

After being advised of the consequences of a no contest plea and the effects of probation, defendant waived his right to trial and pled no contest to counts 3 and 5 in exchange for dismissal of the remaining counts. The trial court sentenced defendant to the upper term of four years on count 1, suspended the sentence, and placed defendant on five years of formal probation. Among the conditions of probation, defendant was required to perform 90 days of Caltrans service and attend one year of sexual offender counseling. The trial court suspended imposition of the sentence on count 5.³

At a September 9, 2010 follow-up hearing, defendant filed a proof of his enrollment in Caltrans and the trial court ordered defendant to show proof of at least 12 days of Caltrans service by March 9, 2011. At the March 9, 2011 hearing date, defendant had done no Caltrans work and had attended counseling only intermittently. The trial court revoked probation and ordered defendant remanded into custody and set the matter for a probation revocation hearing.

¹ All further statutory references are to the Penal Code unless otherwise indicated.

² On the People's motion, count 5 was amended to unlawful sexual intercourse in violation of section 261.5, subdivision (c).

³ Since this appeal concerns only issues involving probation we have dispensed with the usual statement of facts of the underlying offenses.

2. Probation Revocation Hearing

At the probation revocation hearing, the prosecution presented three witnesses. Susana Diaz, associated director for the Volunteer Center South Bay Harbor Long Beach, testified that defendant was directed to take a time sheet to his registered Caltrans site in Norwalk. Diaz further testified that defendant had signed an agreement stating that he would immediately report to the volunteer center if there were any complications in performing his service. Defendant also submitted a medical waiver indicating he was physically, emotionally, and mentally able to perform the work. Defendant never indicated he was unable to fulfill his Caltrans obligations.

Linda Fodor, a landscape lead worker at Caltrans, testified that defendant never reported to work at the Norwalk site. She further testified that she received no messages from defendant between September 8, 2010 and March 9, 2011.

Maria Roland, a counselor who specialized in addictions, testified that she met defendant for counseling sessions every other Saturday starting on August 21, 2010. Defendant consistently attended the meetings until November 3, 2010, but then did not attend any sessions again until February 15, 2011. Defendant never contacted Roland about his absences. He attended a total of nine sessions.

Defendant called two witnesses to testify on his behalf. Michael Oden, defendant's probation officer, testified that defendant was one of his "more exceptional probationers," that defendant reported monthly and never missed a reporting day. Oden was aware that defendant was having difficulty attending the counseling sessions because of his work schedule. Oden was also aware that defendant was having problems contacting Caltrans. He did not file a probation violation report because he believed defendant was making a good faith effort to fulfill his obligations. Oden recommended that the court modify defendant's Caltrans obligation to community service hours that he could fulfill on the weekends. He explained that the Caltrans work could only be done on weekdays and conflicted with defendant's employment.

Defendant's mother, Lovetta May, testified that defendant worked full-time at the UCLA medical center. She relied on defendant's income because she had health

problems and was unable to work. May brought billing records from defendant's cellular telephone account showing calls to the general Caltrans phone number during the month of February.

After hearing argument from the parties, the trial court found defendant in violation of probation and imposed the previously suspended four-year term on count 3. The court also imposed a concurrent term of 16 months on count 5. This appeal followed.

DISCUSSION

I. Standard of Review

A trial court may revoke probation "if the interests of justice so require and the court, in its judgment, has reason to believe from the report of the probation officer or otherwise that the person has violated any of the conditions of his or her probation." (§ 1203.2, subd. (a).)

We review defendant's challenge to the sufficiency of the evidence supporting the trial court's finding that defendant violated the terms of his probation under the substantial evidence standard. (*People v. Kurey* (2001) 88 Cal.App.4th 840, 848-849.) "Under that standard, our review is limited to the determination of whether, upon review of the entire record, there is substantial evidence of solid value, contradicted or uncontradicted, which will support the trial court's decision. In that regard, we give great deference to the trial court and resolve all inferences and intendments in favor of the judgment." (*Ibid.*, fns. omitted.) The evidence must, however, support a conclusion that the probationer's conduct constituted a willful violation of the terms and conditions of probation. (*People v. Galvan* (2007) 155 Cal.App.4th 978, 982.)

We review the trial court's decision to revoke probation for abuse of discretion. (*People v. Kelly* (2007) 154 Cal.App.4th 961, 965.)

II. No Abuse of Discretion

Defendant was advised on July 19, 2010, of his obligation to complete 90 days of Caltrans service and one year of sex offender counseling. Defendant was also

admonished that the four-year prison term would be imposed if he did not comply with the terms of his probation.

By the March 29, 2011 probation hearing, defendant had performed none of his Caltrans obligations and had failed to attend counseling for three months. He had provided no explanation to his counselor for his absences, nor had he attempted to notify the volunteer center of any problems in scheduling his Caltrans service. Substantial evidence supports the trial court's finding that defendant's conduct constituted a willful violation of the terms and conditions of his probation.

The trial court did not abuse its discretion in refusing to reinstate probation and in sentencing defendant to prison. The trial court considered defendant's history, the reports submitted at sentencing, and the testimony of the witnesses, including the probation officer's recommendation that defendant's probation be modified to substitute community service in place of Caltrans work. The court was not obliged to follow that recommendation. (*People v. Downey* (2000) 82 Cal.App.4th 899, 910.) The record discloses no abuse of discretion by the trial court.

DISPOSITION

The trial court's order revoking defendant's probation and sentencing him to prison is affirmed.

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_____, J.
CHAVEZ

We concur:

_____, P. J.
BOREN

_____, J.
ASHMANN-GERST