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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

MINH TRAN,

Defendant and Appellant.

B280071

(Los Angeles County  
Super. Ct. No. 6PH05587)

APPEAL from an order of the Superior Court of Los Angeles County, Jacqueline H. Lewis, 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, Jonathan J. Kline and Nathan Guttman, Deputy Attorneys General, for Plaintiff and Respondent.

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## INTRODUCTION

Defendant, Minh Tran, appeals from an order revoking his parole. (Pen. Code, §§ 1203.2, 3000.08.) In 1995, defendant was convicted of first degree murder and sentenced to 25 years to life in state prison. In 2014, he was released on parole. A condition of his parole was that he “not engage in conduct prohibited by law.” On August 1, 2016, he was arrested after his 12-year-old nephew, S.T., reported defendant had sodomized and sexually abused him. S.T. subsequently recanted. On November 10, 2016, following a contested revocation hearing, the trial court found defendant in violation of his parole conditions and remanded him to the custody of the Department of Corrections and Rehabilitation for further parole consideration pursuant to Penal Code section 3000.08, subdivision (h).

Defendant argues the trial court abused its discretion because there was insufficient evidence of a parole violation. Defendant asserts the trial court’s decision was based on speculation. Defendant’s position is without merit.

## DISCUSSION

### A. *Standard of Review*

We review the trial court’s parole violation factual finding for substantial evidence. (Cf. *People v. Butcher* (2016) 247 Cal.App.4th 310, 318 [probation revocation]; see *In re Miller* (2006) 145 Cal.App.4th 1228, 1235 [“Parole revocation and probation revocation after the imposition of a sentence are constitutionally indistinguishable”].) “[W]e do not reweigh

conflicting evidence or determine credibility on appeal. [Citations.]” (*People v. Butcher*, *supra*, 247 Cal.App.4th at p. 318.) We review the trial court’s decision to revoke parole for an abuse of discretion. (Cf. *People v. Lippner* (1933) 219 Cal. 395, 400; *People v. Butcher*, *supra*, 247 Cal.App.4th at p. 318.) When substantial evidence supports a parole violation finding, the trial court does not abuse its discretion in revoking parole. (Cf. *People v. Hawkins* (1975) 44 Cal.App.3d 958, 968.)

#### B. *There Was No Abuse of Discretion*

Substantial evidence supports the trial court’s findings. S.T. was reluctant to tell any authority figure about the abuse by defendant, his maternal uncle, until he realized that if he kept quiet one of his younger siblings might be victimized. Thereafter, S.T. told a consistent and detailed story to several people—a friend, a teacher, his school principal, and a nurse. The details included the following: defendant and S.T. shared a bed in S.T.’s mother’s home; defendant had been sodomizing S.T. once a month for about a year; defendant had also put S.T.’s hand on his penis; defendant would “spoon[]” S.T. and then assault him; defendant used saliva as a lubricant; he ejaculated into a sock; defendant repeatedly shaved his pubic hair, let it grow out and then shaved it again; and defendant’s penis was short and stubby and possibly circumcised. S.T. admitted he had an erection during the abuse. He permitted a forensic nurse to perform an invasive and embarrassing examination.

S.T. subsequently recanted. He said he was mad at defendant for disciplining him and making him do chores. He wanted defendant out of the house. But there was substantial

evidence S.T.'s family had pressured him to recant. S.T. testified his mother told him the allegations were "tough" for the family. S.T.'s teacher told the school principal that S.T. "felt like his family was pressuring him into saying that he was just mad and it wasn't true." Both S.T.'s mother and father denied having discussed the allegations with their son. S.T. also did chores and was disciplined at his father's house, which undermined S.T.'s claim that he was angry at defendant for those things occurring at defendant's house. Further, the parents and educators described S.T. as a well-behaved, compliant, academically successful young man while defendant alone described S.T. as rebellious.

The trial court found S.T.'s initial account of abuse credible because it was "very detailed" and it would be "very unusual to come up with that kind of detail" when a 12-year-old is making up a story. The trial court found it significant that S.T. had admitted to an embarrassing fact (his own erection during the abuse). The trial court observed that S.T. made direct eye contact when discussing his abuse allegations but looked away when he denied they were true. When the court asked S.T. how he would feel if defendant returned to the family home and shared a bed with S.T.'s younger brother, S.T. said no, he would not be okay with that. The trial court described S.T.'s demeanor in that moment as adamant.

Given the foregoing evidence, the trial court had a substantial basis for concluding S.T. told the truth initially but, under pressure from his family, lied when he recanted. This conclusion was sufficient to support defendant's parole revocation. And because substantial evidence supported the

parole violation finding, the trial court did not abuse its discretion when it revoked defendant's parole.

### **DISPOSITION**

The order revoking defendant's parole is affirmed.

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RAPHAEL, J.\*

We concur:

KRIEGLER, Acting P.J.

BAKER, J.

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