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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

JASON FLOWERS,

Defendant and Appellant.

B286194

(Los Angeles County
Super. Ct. No. MA060216)

APPEAL from an order of the Superior Court of Los Angeles County. Kathleen Blanchard, Judge. Affirmed.

Rudolph J. Alejo for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Shawn McGahey Webb and Shezad H. Thakor, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant appeals the trial court's revocation of his probation and reinstatement of his suspended sentence. Defendant contends he did not willfully refuse to perform required community service because he was a full-time caregiver to two small children, and insufficient samples on three required drug tests were the result of mistake. We affirm.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

1. The Underlying Probation

By information filed August 1, 2013, defendant was charged with one count of assault with a deadly weapon (Pen. Code,¹ § 245, subd. (a)(1)), one count of assault by means likely to produce great bodily injury (§ 245, subd. (a)(4)), one count of terrorist threats (§ 422, subd. (a)), and one count of resisting an executive officer (§ 69)). The information further alleged as to count 4 that defendant had inflicted great bodily injury (§ 12022.7, subd. (a)) and as to all counts that defendant had suffered a prior serious and/or violent felony conviction (§ 667, subd. (a)(1)).

On September 15, 2014, defendant accepted a plea agreement pursuant to which the trial court sentenced him to an aggregate term of seven years, eight months. The court suspended sentence and placed defendant on five years of formal probation.

¹ All statutory references herein are to the Penal Code unless otherwise noted.

2. *Defendant's Probation Violation*

On June 27, 2017, the court revoked defendant's probation as the result of an incident in which defendant allegedly assaulted his wife. The court conducted a probation violation hearing on November 3, 2017.

(a) *Testimony*

Lakeasha Russell, defendant's wife, testified that on June 25, 2017, she and defendant took her daughter to a friend's house late in the evening. Before they dropped her off, Russell's daughter gave them \$5 for gasoline. Defendant stated he was tired and needed to rest, and closed his eyes for about five minutes. Russell told defendant they needed to get home because it was late and they had two young children in the car. Defendant wanted to go to a friend's house and use the \$5 gas money to get a CD.

Russell and defendant began to argue, and defendant told her he was tired of her and began to hit her. Russell pushed defendant away. Defendant hit her twice with his closed fist. Defendant got out of the car and went over the passenger door and pulled Russell's hair and put his arm around her neck. She had trouble breathing. When he realized what he was doing, defendant stopped. Russell called the police.

Police officers responding to the scene took a photograph of Russell's face. The picture did not show any bruises or abrasions.

Defendant testified that earlier in the day, he and Russell had gone to visit two of their daughters in DCFS custody in Riverside. After Russell's daughter gave them \$5 to buy gas, defendant realized he had more gas in his car than he thought and decided to spend the money on

a CD. Russell became angry when defendant stated he wanted to stop by his friend's house, and he pulled the car over when Russell started to get angry. Russell took the \$5 bill, ripped it up, and started to hit defendant in the mouth with the money and scratched his face. Defendant denied hitting Russell, claimed his wife started the fight, and asserted that she is "mentally ill." The parties stipulated that a police officer saw a small cut on defendant's face.

(b) The Probation Officer's Report

The parties stipulated that defendant's probation officer would testify in accordance with the report he prepared following defendant's arrest. The report indicated that defendant was current on his \$25 monthly payments, but he had failed to provide evidence of participation in a community service program. Defendant had successfully completed an out-patient substance abuse program. Defendant's drug testing had been successful, except for three tests returned for insufficient quantity and one missed test. The probation officer recommended that the court "admonish the defendant to comply with all of his conditions of probation. All other terms and conditions to remain the same."

3. The Trial Court Imposes the Suspended Sentence

Defendant admitted he had not done 120 days of community service as required by his probation terms. He stated that he had full custody of his children, who were one year and three years old, and his wife worked full time. He could not afford childcare, and he had the

children with him at all times. However, since his marriage was now over, he could start tomorrow on the community service.

Defendant explained that the three drug tests returned for insufficient quantity were the result of his mistaken belief that he had given a large enough sample.² When he went back, his tests were clean.

In support of reinstatement of probation, defendant argued that he and Russell had given very different version of events. He asserted that the photograph of Russell did not support the conclusion that defendant had hit her hard on the face. Further, defendant's probation report indicated that he had completed a drug treatment program, and he tested negative for most of the dates he tested.

The court stated that it had observed the witnesses and did not agree that the photograph of Russell disproved her contention that defendant hit her on the face. Rather, the court found the photograph was taken at night and Russell had dark skin, and bruises do not immediately appear on the skin. While testifying, Russell was very upset and reluctant to convey the details of the incident. Defendant, on the other hand, was not credible and the court found "a lot of deflection and a lot of refusal to take responsibility."

The court found defendant in violation of his probation for failing to obey all laws based on the assault, and also based upon his failure to provide sufficient samples for testing, missing drug tests, and failing to complete 120 days of community service. "Basically, the testimony of

² Defendant contends his probation officer "was standing right there" when he gave his urine samples and that "I can't put the cup inside the plastic bag until he says it's fine to do so."

the defendant was that he willfully didn't do [his community service] because he had other things to do.”

The court found defendant unsuitable for probation, and imposed defendant's previously suspended sentence of seven years, eight months. The court granted defendant 132 days custody credit plus an additional 19 days goodtime/worktime, for a total of 151 days.

DISCUSSION

Defendant contends the trial court abused its discretion in refusing to reinstate his probation because it relied upon improper reasons, namely, his failure to complete community service and insufficient urine samples. He contends he is now able to perform community service because his marriage is over and he is no longer a caretaker for his children; further, his probation officer approved the urine samples, and thus he had an honest but mistaken belief he had given large enough samples for his drug tests.

A trial court may revoke probation in the interests of justice if it has reason to believe the probationer committed another offense or otherwise violated the terms of probation. (Pen. Code, § 1203.2, subd. (a); *People v. Monette* (1994) 25 Cal.App.4th 1572, 1575.) The facts supporting revocation of probation need only be proved by a preponderance of the evidence. (*People v. Rodriguez* (1990) 51 Cal.3d 437, 447 (*Rodriguez*)). Assessing a challenge to the sufficiency of the evidence following a probation revocation hearing, we review the record in the light most favorable to the judgment to determine whether there is substantial evidence from which the trial court could find a probation

violation. (*People v. Kurey* (2001) 88 Cal.App.4th 840, 848; *People v. Carpenter* (1997) 15 Cal.4th 312, 387.)

The trial court's decision to revoke probation lies within its broad discretion and will not be disturbed on appeal absent an abuse of discretion. (*Rodriguez, supra*, 51 Cal.3d at pp. 443-445; *People v. Zaring* (1992) 8 Cal.App.4th 362, 378 (*Zaring*).) Discretion is abused when the decision is arbitrary or capricious or not supported by the facts before the court. (*Zaring, supra*, at p. 378; *People v. Kelly* (2007) 154 Cal.App.4th 961, 965.) “[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. . . .” (*Rodriguez, supra*, 51 Cal.3d at p. 443.) “A trial court abuses its discretion by revoking probation if the probationer did not willfully violate the terms and conditions of probation.” (*People v. Galvan* (2007) 155 Cal.App.4th 978, 983.)

In the instant case, there was sufficient evidence defendant willfully violated his probation. He committed a battery against his wife. Further, he was aware he needed to work with his probation officer to complete his community service, but he did not do so. He had not one, but three urine specimens returned for insufficient quantity. He was also on notice that any further violations would result in a prison term. Yet defendant admittedly failed to comply with these conditions. The trial court was justified in refusing to accept his assurances that defendant would, in the future, comply with the terms of probation. The court did not abuse its discretion.

DISPOSITION

The order of the Superior Court is affirmed.

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WILLHITE, Acting P. J.

We concur:

COLLINS, J.

MICON, J.*

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