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

THE PEOPLE,

Plaintiff and Respondent,

v.

PIERRE LAMAR JAMES,

Defendant and Appellant.

B278699

Los Angeles County
Super. Ct. Nos. MA065884,
MA061783

APPEALS from post-judgment orders of the Superior Court of Los Angeles County, Christopher G. Estes, Judge. Affirmed with directions.

Pamela J. Voich, 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, Assistant Attorney General, Steven D. Matthews and Analee J. Brodie, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Defendant Pierre Lamar James appeals from the trial court's October 3, 2016, orders revoking probation and executing previously imposed prison sentences. The probation violation stems from an incident in which the police stopped and arrested a man identifying himself as Peter James, defendant's identical twin brother. This person fled, and after police lost sight of him for several minutes, they found and arrested defendant. Defendant contends there is insufficient evidence to connect him—rather than Peter—to the original crimes, and that in any event, there is insufficient evidence he violated the terms of his probation. We affirm with directions to correct three minute orders and the abstract of judgment in case No. MA061783.

PROCEDURAL BACKGROUND

By information filed February 18, 2014, defendant was charged in case No. MA061783 with one count of attempted robbery (Pen. Code,¹ § 664/211) committed for the benefit of a criminal street gang (§ 186.22, subd. (b)(1)(C)). By information filed June 4, 2015, defendant was charged in case No. MA065884 with one count of negligent discharge of a firearm (§ 246.3, subd. (a); count 1) and one count of dissuading a witness (§ 136.1, subd. (c)(1); count 3). Defendant pled not guilty and denied the allegations in both cases.²

¹ All undesignated statutory references are to the Penal Code.

² On August 21, 2014, defendant pled no contest in case No. MA061783 and was sentenced to 12 years—the mid-term of two years for the attempted robbery plus 10 years for the violent-felony gang enhancement. The court suspended execution of the sentence and placed defendant on five years' formal probation. But when defendant

On September 22, 2015, defendant pled no contest in both cases. In case No. MA061783, defendant pled no contest to attempted robbery (§ 664/211; count 1) and admitted he committed the offense for the benefit of a criminal street gang (§ 186.22, subd. (b)(1)(B)). In case No. MA065884, defendant pled no contest to dissuading a witness (§ 136.1; count 3).

On November 2, 2015, the court sentenced defendant to an aggregate term of seven years. In case No. MA061783, the court imposed seven years—the mid-term of two years for attempted robbery (§ 664/211) plus five years for the gang enhancement (§ 186.22, subd. (b)(1)(B)). In case No. MA065884, the court imposed the high term of four years for dissuading a witness (§ 136.1) to run concurrently to case No. MA061783. The court then stayed execution of the sentences in both cases and placed defendant on formal probation for five years. Defendant’s probation terms included: obey all laws; do not use or possess any narcotics, dangerous or restricted drugs, or associated paraphernalia; do not associate with drug users or sellers unless attending a drug treatment program; and do not ride in any vehicle in which you know illegal controlled substances are present. The court dismissed the remaining counts and allegations.

On March 17, 2016, in response to a report of a potential probation violation, the court summarily revoked defendant’s

later realized that his underlying offense was eligible only for a five-year serious-felony gang enhancement (§ 186.22, subd. (b)(1)(B)) rather than the 10-year enhancement that had been imposed (*id.*, subd. (b)(1)(C)), he moved to withdraw his plea. On August 27, 2015, the court granted the motion.

probation.³ After a contested hearing, the court found the probation violation true. The court terminated probation and executed the previously imposed sentences in both cases.

Defendant filed timely notices of appeal. (§ 1237, subd. (b).)

FACTUAL BACKGROUND

On March 15, 2016, Los Angeles County Sheriff's Deputy Christopher May and his partner, Deputy Nelson, stopped a car driven by a Mr. Doss and carrying one passenger. The deputies detained the two men and searched the car. The search revealed what appeared to be methamphetamine on the floor near the passenger seat and a glass methamphetamine pipe in the center console.

Although May identified the passenger as defendant Pierre James at the probation violation hearing, at the time of this encounter, the passenger identified himself as Peter James. May would later learn that Peter James and Pierre James were identical twin brothers—and May did not know if he had ever contacted Peter James.

A search of the passenger's pockets revealed five cards bearing the name Pierre James: three access cards, including one Visa and one MasterCard, an identification card for the United States Department of Labor Job Corps program, and an identification card from a company called Solid Concepts. The passenger also had numerous access cards, social security cards, and a personal check in names other than Peter or Pierre James. The passenger admitted the cards were not his but declined to

³ The prosecution also filed then dismissed case No. MA068223, which arose from the same incident.

provide the name or phone number of their actual owners. After a warrants search revealed two outstanding misdemeanor warrants for Peter James, the passenger was placed under arrest.

At some point during this questioning, the passenger complained that the back seat of the patrol car was hot, and he asked May to open the window. May rolled the window down four or five inches. Two or three minutes later, the passenger reached his hand through the gap, opened the door from the outside, and fled.

Nelson pursued the passenger on foot, and May followed in the patrol car. During the pursuit, the deputies lost sight of the passenger for approximately three to five minutes. At that point, May received a radio notification that Deputies Carr and Perez had apprehended defendant half-a-mile or a mile from the site of the initial detention.⁴ Defendant was taken into custody, brought to the hospital, and then booked under the name Peter James. In response to a fingerprint livescan, the county system returned the name Peter James, but the state system returned the name Pierre James.

Defendant testified that he was not in the car with Doss on March 15, 2016. Instead, he was sitting in El Dorado Park waiting for his identical twin brother, Peter, and Doss to pick him up. When Peter and Doss didn't show up, defendant left the park and headed towards his cousin's house. Defendant always took a shortcut to get there: he walked along the top of a wall to a fence and hopped the fence. But that night, as defendant walked along

⁴ Neither Nelson nor Carr nor Perez testified at the probation violation hearing.

the wall across from his cousin's house, police ran towards him and yelled at him to get on the ground. Defendant jumped off the wall and was bitten by a police dog. Deputies handcuffed him, put him in the back seat of a patrol car, and took him to the hospital. Defendant repeatedly insisted to the deputies that he was not Peter James. Finally, defendant testified that the wallet recovered that night did not belong to him, and he was not carrying a wallet when he was detained.

DISCUSSION

Defendant contends that there is insufficient evidence to connect him—rather than Peter—to the original traffic stop, and that in any event, there is insufficient evidence he violated the terms of his probation. We disagree.

1. There is substantial evidence that defendant—not Peter—was the subject of the initial stop.

A court may revoke a defendant's probation when the prosecution proves by a preponderance of the evidence that he willfully violated one or more probation conditions. (§ 1203.2, subd. (a); *People v. Rodriguez* (1990) 51 Cal.3d 437, 447 [burden of proof]; *People v. Galvan* (2007) 155 Cal.App.4th 978, 982 [willfulness].) The court has “very broad discretion in determining whether a probationer has violated probation.” (*Rodriguez*, at p. 443; *In re Coughlin* (1976) 16 Cal.3d 52, 56 [“probation may be revoked despite the fact that the evidence of the probationer's guilt may be insufficient to convict him of the new offense”].)

We review the court's factual findings for substantial evidence. (*People v. Superior Court (Jones)* (1998) 18 Cal.4th 667, 681.) “The standard is deferential: ‘When a trial court's factual

determination is attacked on the ground that there is no substantial evidence to sustain it, the power of an appellate court *begins and ends* with the determination as to whether, *on the entire record*, there is substantial evidence, contradicted or uncontradicted, which will support the determination'” (*Ibid.*) In applying this test, we review the evidence in the light most favorable to the court’s ruling and presume in support of the post-judgment order the existence of every fact the court could reasonably deduce from the evidence. (*People v. Kurey* (2001) 88 Cal.App.4th 840, 848.)

Here, the court explicitly said it did not believe defendant’s testimony. Instead, it credited May’s in-court identification of defendant as the passenger he detained that night. Other evidence supported this view. It was reasonable for the court to infer a person climbing a fence was fleeing. It was also reasonable for the court to infer that the cards in the wallet bearing defendant’s name actually belonged to defendant—and to further infer that defendant was the person carrying them. First, even if defendant was in the habit of loaning access cards to his brother, there would have been no reason for Peter to have defendant’s other cards—the cards from Job Corps and Solid Concepts. Second, the inference that the wallet belonged to defendant is buttressed by the fact that when he was apprehended, he was not carrying a wallet or any other identification. While this evidence may not have been sufficient to prove defendant’s identity beyond a reasonable doubt, under our deferential standard of review, we conclude it is sufficient to prove identity by a preponderance of the evidence.

2. There is substantial evidence that defendant violated one or more probation conditions.

Defendant's probation terms included: obey all laws; do not use or possess any narcotics, dangerous or restricted drugs, or associated paraphernalia; do not associate with drug users or sellers unless attending a drug treatment program; and do not ride in any vehicle where you know illegal controlled substances are present. We conclude there is substantial evidence to support the court's holding that defendant violated at least one of these conditions when he obstructed law enforcement by fleeing from the patrol car.

The court explained that before the radio car's window was lowered at his request, defendant had been advised he was under arrest. Defendant then reached through the window, opened the door, and ignored the deputies' orders to stop while he fled. This evidence was sufficient to establish that defendant obstructed an executive officer and that, in so doing, he failed to obey all laws.

3. Three minute orders and the abstract of judgment in case No. MA061783 must be corrected.

In a criminal case, the oral pronouncement of sentence constitutes the judgment. (*People v. Mesa* (1975) 14 Cal.3d 466, 471.) "An abstract of judgment is not the judgment of conviction; it does not control if different from the trial court's oral judgment and may not add to or modify the judgment it purports to digest or summarize." (*People v. Mitchell* (2001) 26 Cal.4th 181, 185; *People v. Scott* (2012) 203 Cal.App.4th 1303, 1324 ["To the extent a minute order diverges from the sentencing proceedings it purports to memorialize, it is presumed to be the product of clerical error."].) Accordingly, "[c]ourts may correct clerical errors at any time, and appellate courts (including this one) that have

properly assumed jurisdiction of cases” (*Mitchell*, at p. 185), may order correction of an abstract of judgment that does not accurately reflect the oral pronouncement of sentence (*id.* at pp. 185–188). The minute orders of September 22, 2015, November 2, 2015, and October 3, 2016, and the abstract of judgment for case No. MA061783 contain errors that must be corrected on remand.

3.1. Abstract of Judgment

In section 2, the abstract indicates the court imposed a five-year enhancement under section 186.22, subdivision (b)(1)(C), but as discussed below, defendant was convicted of and sentenced under subdivision (b)(1)(B).

In sections 1, 2, and 9, the total time imposed is contained in parentheses, indicating the time is concurrent or stayed. But the abstract of judgment in case No. MA065884 also encloses the imposed time in parentheses. Taken together, neither abstract provides for a base term. As case No. MA061783 provides for the longest term of imprisonment, the sentence in that case must be served first, and the court should remove the parentheses in sections 1, 2, and 9.

3.2. Minute Orders

The minute orders of September 22, 2015, November 2, 2015, and October 3, 2016, are also incorrect. Both minute orders indicate that defendant admitted committing count 1 for the benefit of a criminal street gang under section 186.22, subdivision (b)(1)(C)—the allegation applicable to violent felonies—and was sentenced to five years for that enhancement. In fact, defendant admitted to and was sentenced under

subdivision (b)(1)(**B**), the allegation applicable to serious felonies. Accordingly, the minute orders must be corrected.

As the current court apparently relied on those minute orders when executing the previously suspended sentence, the minute order of October 3, 2016, also erroneously refers to subdivision (b)(1)(C) rather than (b)(1)(B). That minute order must also be corrected.

DISPOSITION

The post-judgment orders are affirmed. Upon issuance of the remittitur in this case, the court is directed to correct the September 22, 2015, November 2, 2015, and October 3, 2016, minute orders and the abstract of judgment in case No. MA061783 in accordance with the views expressed in this opinion and to send a certified copy of the corrected abstract of judgment to the Department of Corrections and Rehabilitation.

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LAVIN, Acting P.J.

WE CONCUR:

EGERTON, J.

CURREY, J.*

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