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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE, Plaintiff and Respondent, v. JERI T. WORLEY, Defendant and Appellant.	B237110 (Los Angeles County Super. Ct. No. GA078866)

APPEAL from a judgment of the Superior Court of Los Angeles County. Gilbert Ruiz, Judge. Affirmed as modified.

Cindy Brines, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, James William Bilderback II and Mark E. Weber, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant Jeri Worley was arrested in January 2010 for possession of methamphetamine and a glass pipe with methamphetamine residue on it. That same month, the trial court diverted the charges against appellant for one year, on the condition that she be formally admitted to the drug court program. In May 2010, following several failures by appellant to appear in court, the trial court terminated drug court and reinstated the charges against appellant. In July 2010, appellant pled no contest to one count of possession of a controlled substance, methamphetamine, in violation of Health and Safety Code section 11377 and one count of possession of a smoking device in violation of Health and Safety Code section 11364, subdivision (a). She admitted that she had four prior felony convictions within the meaning of Penal Code[1] section 1203, subdivision (e)(4) and two prior prison terms within the meaning of section 667.5, subdivision (b). The trial court suspended imposition of appellant's sentence and placed her on three years probation, on the condition, inter alia, that she complete the drug court program. Appellant's probation was later revoked and in November 2011, she was sentenced to a total term of five years in state prison.

Appellant appeals, contending that the evidence is insufficient to prove that she violated probation. We affirm the judgment of conviction.

Background

On January 22, 2010, appellant was formally admitted into the drug court program. She failed to appear in court on February 5, 2010, and March 5, 2010. A bench warrant was issued for her arrest and her drug court enrollment was terminated. On April 2, 2010, the court learned that appellant had been in prison and reinstated her drug court enrollment. Appellant failed to appear in court on April 16, 2010, and a bench warrant was issued for her arrest. Her drug court enrollment was terminated on May 21, 2010.

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

On July 12, 2010, charges were reinstated against appellant, and she pled no contest to the charges and allegations. Appellant was placed on three years formal probation and ordered to complete the drug court program. On September 15, 2010, appellant failed to appear in court, probation was revoked and a bench warrant was issued for her arrest. On October 1, 2010, appellant's enrollment in the drug program was terminated.

In October 2011, appellant was arrested on the bench warrant. On October 14, 2011, she appeared in court. The proceedings were as follows:

The court: "Jeri Teresa Worley or Wright."

Appellant's counsel: "She was in drug court last year but bench warranted from it. I suggest we set it for further proceedings."

The court: "We need a P & S report?"

Appellant's counsel: "Probably."

The court: "P & S."

Appellant's counsel: "We will not get it in a week."

The court: "She's no longer eligible to participate in drug court?"

Appellant's counsel: "She's been terminated twice from drug court. That does not sound good."

The court: "We need three weeks for a probation report. 11-3. [¶] Do you want violation of drug court condition?"

Prosecutor: "Well, [she's] already been terminated the second time from drug court on 10-1-10, and a bench warrant was issued at that time. She's just brought in, so we have to have a violation of probation."

The court: "So you want a hearing?"

Appellant's counsel: "It's just the D.A. asking you to take judicial notice of the file, unless I can proffer she's been kidnapped and held by pirates for the last year. It's difficult to get out of."

As ordered by the court, further proceedings took place on November 3, 2011. In pertinent part, those proceedings were as follows:

The court: "Jeri Wright. [¶] The judge did put her on Prop. 36. Oh, this is 1203; so this is a drug court matter."

Prosecutor: "No, not anymore. They terminated."

The court: "Is that right?"

Appellant's counsel: "Yes. Drug court was terminated."

The court: "Was that terminated after hearing?"

Appellant's counsel: "Well, after multiple bench warrants."

The court: "So there's no dispute?"

Prosecutor: "No."

Appellant's counsel: "No."

The court: "Well, I read the probation report. You have a long history of drug abuse. Generally the probation officer recommends probation, but here there is a passage that says --."

The remainder of the hearing involved a discussion of the appropriate sentence for appellant.

Discussion

Appellant contends that the prosecution did not present any evidence that she violated her probation, and the trial court did not indicate what evidence the court relied upon to revoke appellant's probation. She concludes that there is insufficient evidence to support the revocation, and that the court's revocation was therefore arbitrary.

Section 1203.2, subdivision (a), authorizes a court to revoke probation if the interests of justice so require and the court, in its judgment, has reason to believe that the person has violated any of the conditions of his or her probation.

"The standard of proof in a probation revocation proceeding is proof by a preponderance of the evidence. [Citations.] 'Probation revocation proceedings are not a part of a criminal prosecution, and the trial court has broad discretion in determining

whether the probationer has violated probation.' [Citation.]" (*People v. Urke* (2011) 197 Cal.App.4th 766, 772.)

A probation revocation decision is reviewed for substantial evidence. "[G]reat deference is accorded the trial court's decision, bearing in mind that '[p]robation is not a matter of right but an act of clemency, the granting and revocation of which are entirely within the sound discretion of the trial court. [Citations.]' [Citation.]" (*People v. Urke, supra,* 197 Cal.App.4th at p. 772.)

A condition of appellant's probation was that she obey all court orders. She violated this provision when she did not appear as ordered on September 15, 2010, and absconded. "[N]o initial hearing need precede revocation of probation of one who has deserted his probation, and . . . therefore summary proceedings to revoke probation of an absconding probationer are proper." (*People v. Dale* (1973) 36 Cal.App.3d 191, 194.) Thus, the trial court properly revoked her probation in September 2010.

After a summary revocation of probation, the defendant is entitled to formal proceedings. (*People v. Clark* (1996) 51 Cal.App.4th 575, 581, disapproved on another ground by *People v. Mendez* (1999) 19 Cal.4th 1084.) Appellant contends that she did not receive formal proceedings after she was arrested on the bench warrant. We do not agree.

"A probation revocation hearing involves some, but by no means all, of the fundamental rights afforded a defendant at trial. Its purpose is not to determine guilt or innocence but is whether conditions attached to an act of clemency have been met. There is no right to a jury trial. Confrontation in the proceeding is not an absolute right." (*People v. Dale, supra,* 36 Cal.App.3d at p. 195.) Hearsay in the probation report may be considered. (*Ibid*.) "[T]he principles of *Boykin*, *Tahl*, and *Mosley* do not apply to proceedings to revoke probation where the matter is submitted on the report of the probation officer. Where, as here, *Morrissey* rights are waived by conduct of counsel in submitting an alleged violation of probation upon the probation report and the defendant acquiesces by his silence, the waiver is effective." (*Ibid*.)

At the October 14, 2011 hearing, the district attorney in effect asked the court to take judicial notice of its files, which would show that appellant's drug court enrollment had been terminated when she failed to appear in court as ordered for progress reports. "'Judicial notice ordinarily may be taken of a court's own records, including the prior pleadings in a case. [Citations.]' [Citations.] And upon the request of a party, a trial court must take judicial notice of its own records." (*People v. Cavanna* (1989) 214 Cal.App.3d 1054, 1058.) The court's records are evidence that appellant did not appear as ordered and did not complete drug court, and thus showed two violations of her probation.

Appellant's counsel did not object to the judicial notice, and indicated that appellant had no reasonable explanation for her failure to appear in court. Appellant remained silent. Thus, she waived her right to a more formal proceeding.

As requested by appellant's counsel, the court ordered a probation and sentencing report and also ordered "further proceedings" on November 3, 2011.

At the November 3, 2011 hearing, appellant's counsel acknowledged that drug court had been terminated after multiple bench warrants. The court asked: "So there's no dispute?" Appellant's counsel replied: "No." Further, the court noted that it had read the probation report. That report states that appellant did not complete drug court.

"[A]t a probation revocation hearing the violation is ordinarily established by the probation officer's report. (See Pen. Code, § 1203.2.) . . . [I]t is usually inconsequential whether the defendant admits his violation or stands mute. The probation report alone, if not rebutted or impeached, is a sufficient showing to support a revocation and sentence." (*People v. Garcia* (1977) 67 Cal.App.3d 134, 138.) Here, the probation report showed that appellant did not complete her drug court program, which was a condition of her probation. Appellant did not dispute this in any way. Thus, the probation report was a sufficient showing to support revocation of probation.

To the extent that appellant contends that the November 3, 2011 hearing was only a sentencing hearing and the trial court could not consider evidence at that hearing, we do not agree. There is nothing to suggest that the hearing was so limited. The trial court

gave appellant an opportunity at the beginning of the hearing to dispute the probation violation finding, and appellant declined. Only then did the court proceed to a discussion of the appropriate sentence.

1. Fines, fees and assessments

Respondent contends that the abstract of judgment should be corrected to reflect the fines and penalty assessments imposed when appellant pled no contest in July 2010. Respondent is correct.

In July 2010, the court imposed a $50 lab fee imposed pursuant to Health and Safety Code section 11372.5, a $50 penalty assessment imposed pursuant to section 1464 and a $35 penalty assessment imposed pursuant to Government Code section 76000. The abstract of judgment does not reflect these fees and assessments.

When the court revoked appellant's probation in 2011, the court imposed a $40 court security fee under section 1465.8. This amount is incorrect. It should be $30.[2] The minute order from the hearing shows a $200 restitution fine pursuant to section 1465.8. The amount originally imposed by the trial was $600, and was correct.

[2] The fee was $30 when appellant committed her offenses in January 2010 and when she pled no contest to the charges in July 2010. (§ 1465.8, amended by Stats. 2009-2020, ch. 22, § 29.)

Disposition

The judgment of conviction is modified to correct the amount of the court security fee to $30. The judgment of conviction is affirmed in all other respects.

The abstract of judgment is ordered corrected to reflect a $50 lab fee imposed pursuant to Health and Safety Code section 11372.5, a $50 penalty assessment imposed pursuant to section 1464, a $35 penalty assessment imposed pursuant to Government Code section 76000 and a $600 restitution fine pursuant to section 1465.8. The clerk of the superior court is directed to prepare an amended abstract of judgment reflecting these corrections and to deliver a copy to the Department of Corrections and Rehabilitation.

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ARMSTRONG, J.

We concur:

TURNER, P. J.

MOSK, J.