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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. YEH CHI LIEN, Defendant and Appellant.	B271260 (Los Angeles County Super. Ct. No. GA085084)

APPEAL from an order of the Superior Court of Los Angeles County, Jared D. Moses, Judge. Reversed and remanded with directions.

Lori A. Quick, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Margaret E. Maxwell and Thomas C. Hsieh, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Pursuant to a negotiated plea agreement, appellant Yeh Chi Lien was placed on formal probation for five years, subject to completion of a domestic violence counseling program and serving 364 days in county jail. After completing the probationary conditions, appellant filed a motion for early termination of probation. The trial court denied the motion, determining that the five-year probationary period was a material term of the plea agreement and that under *People v. Segura* (2008) 44 Cal.4th 921 (*Segura*), it lacked authority to unilaterally modify the probationary term. For the reasons set forth below, we conclude the trial court had the authority and discretion to consider appellant's motion for early termination of probation.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY[1]

On December 16, 2011, appellant called Gregory Young and threatened to kill Young unless he stopped dating appellant's ex-wife, Jennifer Fann. Appellant then drove to Fann's house to convince her to stop dating Young. After persuading Fann to enter his vehicle, he locked the car doors and prevented her from exiting. As appellant drove

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[1] As appellant does not challenge the factual basis for his conviction, the facts are taken from the probation officer's report.

southbound, appellant told Fann he wanted to drive off a bridge. After Fann pleaded with him, appellant told her he would not kill her if she told him Young's home address. She agreed, and appellant drove to the location. On the way, appellant told Fann that he was going to hire gangsters to kill her and Young. When they arrived at Young's home, appellant told Fann that if she did not end the relationship with Young, she and Young would be killed later that day. Appellant then drove home, and Fann's daughter picked her up there.

Appellant was charged with one count of kidnapping (Pen. Code, §207, subd. (a)),[2] and three counts of making criminal threats (§ 422). He pled not guilty to all charges. Subsequently, appellant negotiated a plea. At the change of plea hearing on April 30, 2012, the trial court (Hon. Candace J. Beason) summarized the plea offer: "[Appellant] could plead [guilty] to any count to a 422, and that he would be placed on five years formal felony probation. He could get 364 days in the county jail, and -- but he would have to waive five days of back time. He would be required to do D.V. [domestic violence] conditions. And that was the offer. Then the People would dismiss the others, and there would be a protective order."

When taking the plea, the prosecutor informed appellant that "[y]ou will be placed on formal probation in

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[2] All further statutory citations are to the Penal Code, unless otherwise stated.

this case. The court will impose certain terms and conditions of your probation. If you violate the terms of your probation, the court may impose a sentence . . . up to the maximum time of the offense. " The trial court also informed appellant that he would be able to pay restitution fines and fees "over the course of the five years that you are on probation."

When asked, prior to entering his plea, whether he had any questions, appellant responded, "If I'm on good behavior when can I -- when can I have this be canceled." The trial court responded: "Okay. We had talked earlier, not about it being canceled, but if after three years, if you -- if everything has been fine, the court would consider an early termination of the probation, but it would be at least three years." On this point, the prosecutor stated: "I'm not making any promises to you on what the court is going to do or what that -- I might not be that same prosecutor three years from now. I don't know what that D.A. is going to say. I'm not making any promises to you." Appellant responded, "That is not necessary."

Pursuant to the plea agreement, appellant pled guilty to one count of making a criminal threat, and the remaining counts were dismissed. During sentencing, the trial court first stated: "[T]he court is going to indicate five years formal probation, but I'm indicating here the possibility of termination of probation after three years. . . ." The court placed appellant on formal probation for five years and sentenced him to 364 days in county jail.

On March 3, 2016, after having been on probation for more than three years, appellant filed a motion for early termination of probation pursuant to section 1203.3.[3] At the hearing on appellant's motion, the prosecutor (who was not the same prosecutor who appeared at the taking of the plea), opposed the motion. She stated that "it was a negotiated plea with the agreement that [appellant] would serve five years probation," that the offense to which appellant had pled guilty was "very serious," and that appellant "did get a break of sorts because I see that he served 364 days in county jail."

The trial court (Hon. Jared D. Moses) found that under *Segura*, it lacked authority to unilaterally terminate probation. The court stated: "[S]omething as significant as the time period of probation, I think is something that the court is not at liberty to tinker with." The court explained: "[T]here were expectations on both sides. The People are entitled to the benefit of their bargain. The defendant is entitled to the benefit of his bargain. He had three charges dismissed, including a very serious kidnapping charge. In

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[3] Section 1203.3, subdivision (a) provides: "The court shall have authority at any time during the term of probation to revoke, modify, or change its order of suspension of imposition or execution of sentence. The court may at any time when the ends of justice will be subserved thereby, and when the good conduct and reform of the person so held on probation shall warrant it, terminate the period of probation, and discharge the person so held."

return, there was an agreement about what would happen. And part of that agreement was five years of felony probation. And so I think, for me at this point, to go behind that deal and say I'm going to unilaterally shorten it over the People's objection, I think *Segura* says I can't do that."

Appellant's counsel argued that when appellant pled guilty, the trial court stated it would consider early termination of probation after three years, and the prosecutor's lack of an objection was fairly interpreted as an acknowledgment of the possibility of an early termination of probation. The court noted it was an "interesting gray area," but stated, "I think because no affirmative promises or representations were made, he wasn't relying upon that in entering into a plea. That was not part of the deal." It denied appellant's motion for early termination of probation. However, the court encouraged counsel to "contact your appellate department," stating, "I'd be happy to grant it with . . . authority from the court of appeal."

Appellant filed a timely notice of appeal.

DISCUSSION

"A plea agreement 'is a tripartite agreement which requires the consent of the defendant, the People and the court.'" (*People v. Feyrer* (2010) 48 Cal.4th 426, 436-437 (*Feyrer*), quoting *People v. Yu* (1983) 143 Cal.App.3d 358, 371.) "Acceptance of the agreement binds the court and the parties to the agreement." (*Segura*, *supra*, 44 Cal.4th at p. 930.) "Thereafter, material terms of the agreement cannot

be modified without the parties' consent." (*People v. Martin* (2010) 51 Cal.4th 75, 80, citing *Segura*, *supra*, at p. 935.)

In *Segura*, *supra*, 44 Cal.4th at page 935, footnote 11, our Supreme Court determined that a "probationary jail term" of 365 days in county jail was a material term of a negotiated plea agreement. There, pursuant to a negotiated plea agreement, the defendant pled no contest to one count of inflicting corporal injury upon a spouse. "The prosecutor agreed that the prior conviction allegation would be dismissed, that defendant's present conviction would not be utilized as a 'strike' conviction in a future case, and that defendant would be placed on five years' probation, subject to the condition he serve the first 365 days in county jail." (*Id.* at p. 926.) Thereafter, the defendant moved to shorten the jail term to 360 days. The trial court denied the motion, finding that the 365-day sentence was an integral part of the plea agreement and thus not subject to subsequent modification by the court. (*Id.* at pp. 927-928.) Our Supreme Court agreed. It concluded that "following entry of the judgment, the trial court retained its authority pursuant to section 1203.3 to revoke, modify, or change probation or modify conditions that were not made a part of the parties' plea agreement. Nonetheless, as the trial court recognized, it was not at liberty to modify a condition integral to the granting of probation in the first place -- a negotiated condition included within the plea agreement entered into by the parties, accepted by the court, and incorporated into the judgment." (*Id.* at p. 936.)

Respondent contends that the five-year probationary term was integral to the granting of probation in the instant case and thus, not subject to the trial court's authority pursuant to section 1203.3 to revoke, modify or change probationary conditions. In determining whether the five-year probationary term is a material term of the plea agreement, we note that a negotiated plea agreement is interpreted according to general contract principles. (*Segura*, *supra*, 44 Cal.4th at p. 930.) "'The fundamental goal of contractual interpretation is to give effect to the mutual intention of the parties. (Civ. Code, § 1636.) . . .' [Citation.] 'The mutual intention to which the courts give effect is determined by objective manifestations of the parties' intent, including the words used in the agreement, as well as extrinsic evidence of such objective matters as the surrounding circumstances under which the parties negotiated or entered into the contract; the object, nature and subject matter of the contract; and the subsequent conduct of the parties. [Citations.]'" (*People v. Shelton* (2006) 37 Cal.4th 759, 767.)

Here, appellant pled guilty to one count of making criminal threats and the prosecutor agreed, among other things, that appellant would be placed on formal probation for five years, subject to completing a domestic violence counseling program and serving 364 days in county jail. Prior to appellant's entering his plea, the court stated that it would "consider an early termination" of appellant's probation "after three years." In response, the prosecutor

stated only that he could make no promises regarding what the court would do or what position his office would take on the early termination of appellant's probation. On this record, it is clear the parties intended that appellant would be on formal probation after serving 364 days in county jail. It is equally clear that they intended appellant to be able to seek -- and the court to be able to grant -- early termination of probation after three years.

A contrary interpretation of the plea agreement would run afoul of the general rule that plea agreements incorporate existing law. (*Doe v. Harris* (2013) 57 Cal.4th 64, 66.) As respondent concedes, a trial court has the authority and discretion to modify a probation term during the probationary period, including the power to terminate probation early. (See, e.g., § 1203.3, subd. (a) ["The court may at any time when the ends of justice will be subserved thereby, and when the good conduct and reform of the person so held on probation shall warrant it, terminate the period of probation, and discharge the person so held."].) As our Supreme Court has noted, the probationary statutes "are intended to afford the defendant an opportunity to demonstrate his or her rehabilitation in order to obtain early termination of probation, reclassification of the offense, or dismissal of the action, and -- in certain cases -- all such forms of leniency." (*Feyrer*, *supra*, 48 Cal.4th at p. 440.) "In offering probation in exchange for a defendant's plea of guilty or no contest, . . . the prosecutor is providing the defendant with an opportunity and an incentive to alter the

consequences of his or her conviction in exchange for securing the conviction itself. The fundamental feature of probation is that good conduct on the part of the probationer may invite mitigation of punishment and (in the case of a wobbler) reclassification of the offense. If there is to be any curtailment of those routinely available options, such a restriction should be made an express term of the plea agreement." (*Ibid.*) Here, a restriction on early termination of probation was not an express term of the plea agreement. (See *id.* at p. 438 ["every term of a plea agreement should be stated on the record"].) On the contrary, both the parties and the court acknowledged the possibility of an early termination of probation. Accordingly, the trial court retained authority and discretion pursuant to section 1203.3 to consider and, if appropriate, grant appellant's motion for early termination of probation.

DISPOSITION

The order is reversed and the matter remanded for the trial court to consider appellant's motion for early termination of formal probation.

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MANELLA, J.

We concur:

EPSTEIN, P. J.

COLLINS, J.