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

THE PEOPLE,  
  
Plaintiff and Respondent,

v.

RASHAD ANTHONY DAVIS,  
  
Defendant and Appellant.

2d Crim. No. B282102  
(Super. Ct. Nos. 2009012869,  
2011023668)  
(Ventura County)

Rashad Anthony Davis appeals the trial court's order revoking his probation in two separate cases and ordering the execution of a previously-imposed sentence of four years and eight months in county jail. Appellant contends the court abused its discretion in declining to impose a "split" sentence under Penal Code section 1170, subdivision (h) (hereinafter section 1170(h)). We affirm.

**FACTS AND PROCEDURAL HISTORY**

In March 2010, appellant pled guilty in case number 2009012869 to driving under the influence (DUI) of alcohol with prior DUI convictions (Veh. Code, §§ 23152, subd. (a), 23550.5,

subd. (a)). Imposition of sentence was suspended and appellant was placed on formal probation with terms and conditions including that he serve 210 days in county jail.

In October 2011, appellant pled guilty in case number 2011023668 to transporting a controlled substance (Health & Saf. Code, § 1150, subd. (a)). Imposition of sentence was suspended and he was placed on probation with terms and conditions including that he serve 180 days in county jail.

Appellant violated probation in both cases in 2013. Probation was revoked and reinstated and appellant was ordered to serve 10 days in county jail. He again violated probation in 2014, and probation was revoked and reinstated with terms and conditions including that he serve 30 days in county jail. In March 2015, appellant admitted he had yet again violated his probation in both cases. The court revoked probation and imposed a four-year county jail sentence in case number 2009012869 and a consecutive eight-month county jail sentence in case number 2011023668. Execution of the sentence was suspended and probation was reinstated.

In October 2016, appellant was arrested for shoplifting and tested positive for cocaine. In March 2017, the court found appellant had violated his probation in both cases by committing the shoplifting offense and using cocaine. The court revoked probation and ordered execution of the previously imposed four-year and eight-month county jail sentence. Appellant's request for a "split" sentence consisting of a county jail term and mandatory supervision (§ 1170(h)) was denied.

## DISCUSSION

Appellant contends the court abused its discretion in declining to impose a split sentence under section 1170(h). We disagree.

First, both parties fail to recognize that the court had no authority to impose a split sentence because a four-year and eight-month county jail sentence had already been imposed following the March 2015 revocation of appellant's probation. (*People v. Howard* (1997) 16 Cal.4th 1081, 1087-1088; *People v. Scott* (2014) 58 Cal.4th 1415, 1422-1426 (*Scott*).)

Even assuming that the court had the authority to impose a split sentence, its refusal to do so was not an abuse of discretion. In sentencing defendants convicted of nonserious and nonviolent felonies, trial courts may impose either a full term of custody in county jail or a "split" sentence consisting of county jail followed by a period of mandatory supervision. (*Scott, supra*, 58 Cal.4th at pp. 1418-1419.) The court exercises broad discretion in making this determination. (*People v. Catalan* (2014) 228 Cal.App.4th 173, 178.) A court may decline to impose a split sentence if the record reflects that "the defendant's past performance on supervision substantially outweighs the benefits of supervision in promoting public safety and the defendant's successful reentry into the community upon release from custody." (Cal. Rules of Court, rule 4.415(b)(4).)

Appellant violated his probation five separate times in case number 2009012869, and four times in case number 2011023668. Given appellant's chronically poor performance on probation, the court's refusal to impose a split sentence was not an abuse of discretion. (Cal. Rules of Court, rule 4.415(b)(4); *People v. Catalan, supra*, 228 Cal.App.4th at p. 178.)

**DISPOSITION**

The judgment is affirmed.

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PERREN, J.

We concur:

YEGAN, Acting P. J.

TANGEMAN, J.

Matthew P. Guasco, Judge  
Superior Court County of Ventura

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Appeal, for Defendant and Appellant.

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