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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

FRANK MARTINEZ,

Defendant and Appellant.

B278145

(Los Angeles County
Super. Ct. No. 6PH03509)

APPEAL from an order of the Superior Court of Los Angeles County, Robert Kawahara, Commissioner, and Jacqueline H. Lewis, Judge. Dismissed.

Heather J. Manolakas, 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, Shawn McGahey Webb and Noah P. Hill, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant Frank Martinez appeals from an order overruling his demurrer to the petition for revocation of his parole filed by the Los Angeles County District Attorney's office and denying his "motion for sanctions," in which he requested that the trial court order the district attorney's office to comply with the more stringent requirements under Penal Code section 3000.08, subdivision (f),¹ and California Rules of Court, rule 4.541, applicable to a petition for revocation of parole filed by the supervising parole agency.

Martinez contends that application of less stringent procedural requirements to a petition for revocation of parole filed by the district attorney's office violated his right to equal protection of the law under the state and federal constitutions. The People contend that Martinez's appeal is moot because he admitted the parole violation and served his sentence, and his parole has been terminated. We agree, and dismiss the appeal as moot.

FACTUAL AND PROCEDURAL BACKGROUND

Martinez was convicted of burglary (§ 459) on December 14, 2011 in case No. GA084380, and was sentenced to 32 months in state prison. He was released on parole on August 19, 2013. His parole was scheduled to terminate on November 3, 2016.

Martinez was arrested for residential burglary (§ 459) on March 11, 2016. In case No. 6AM00821, he pleaded guilty or no contest to petty theft (§§ 484, subd. (a), 490.2). He was placed on

¹ All undesignated statutory references are to the Penal Code.

three years' summary probation and ordered to serve 45 days in county jail.

On May 13, 2016 the district attorney filed a petition for revocation of Martinez's parole. At the time the petition was filed, Martinez was not in custody. The petition was supported by information contained in the police reports prepared in connection with Martinez's arrest for residential burglary, as well as Martinez's parole violation history and criminal history, which were prepared by the Department of Corrections and Rehabilitation.

On May 16, 2016 the trial court found probable cause to arrest Martinez, issued a warrant for his arrest, and summarily revoked Martinez's parole. On July 7, 2016 Martinez appeared in court, and the arrest warrant was recalled. Martinez denied the allegations of the petition and was remanded into custody.

On July 19, 2016 Martinez filed a demurrer and a motion for sanctions, asserting that the disparity between the requirements for a petition for revocation of parole that apply to a petition filed by the district attorney's office and those that apply to a petition filed by the supervising parole agency violated his right to equal protection of the laws under the state and federal constitutions.

At the probable cause hearing on July 20, 2016 the trial court denied the motion for sanctions and overruled the demurrer, issuing detailed written rulings.² Martinez admitted the parole violation. The trial court revoked Martinez's parole

² Commissioner Robert Kawahara prepared the written rulings denying the motion for sanctions and overruling the demurrer. However, Judge Jacqueline Lewis was present at the hearing and signed the order reflecting the trial court's rulings.

and ordered him to serve 150 days in county jail, with 97 days of custody credit, with his parole to be restored on the same terms and conditions upon completion of his jail time. On December 19, 2016 Martinez's parole supervision was terminated.³

The trial court granted Martinez's request for a certificate of probable cause to raise his equal protection arguments. Martinez timely filed a notice of appeal on August 26, 2016.

DISCUSSION

In 2011, as part of the Criminal Justice Realignment Act of 2011 (the Realignment Act; § 1170 et seq.), which modified where defendants serve their sentences and how they are supervised on parole, the Legislature enacted section 3000.08 and later amended section 1203.2, both of which govern parole supervision and revocation, along with rule 4.451 of the California Rules of Court. (*People v. Zamudio* (2017) 12 Cal.App.5th 8, 13 (*Zamudio*); see *People v. DeLeon* (2017) 3 Cal.5th 640, 647 (*DeLeon*) [providing an overview of the Realignment Act].)⁴

In *Zamudio* we addressed the identical equal protection challenge to the applicable requirements for a petition for revocation of parole raised by Martinez. We concluded the

³ We requested supplemental briefing on whether Martinez's parole has been terminated. The People in their supplemental brief state they verified with the Department of Corrections and Rehabilitation that Martinez was discharged from parole supervision on December 19, 2016. Martinez does not dispute this fact in his supplemental brief.

⁴ The parties in their supplemental letter briefs also address the recent opinions in *Zamudio* and *DeLeon*.

disparate requirements for petitions for revocation of parole filed by the district attorney and those filed by the supervising parole agency do not violate a defendant's right to equal protection of the law under the state or federal constitutions. (*Zamudio, supra*, 12 Cal.App.5th at pp. 16-17; see also *People v. Castel* (2017) 12 Cal.App.5th 1321, 1325-1337 [concluding different requirements did not violate the defendant's equal protection rights].)

Shortly after our decision in *Zamudio*, the Supreme Court in *DeLeon* addressed a due process challenge to the Realignment Act with respect to whether the superior court must hold a preliminary hearing following a parolee's arrest to determine whether there is probable cause to believe a parole violation has occurred; the court concluded that a preliminary hearing was required. (*DeLeon, supra*, 3 Cal.5th at p. 644.) Before the court reached the merits, it addressed the People's contention that the appeal was moot because the defendant had completed his county jail term and his parole supervision had ended. The defendant argued, as does Martinez, that "his appeal is not moot because he faces disadvantageous collateral consequences from the fact that he was found in violation of parole. [Citations.] He point[ed] out that unsatisfactory performance on parole is a criterion affecting eligibility for probation and mandatory supervision [citation], and is an aggravating circumstance in selecting a term of imprisonment [citation]." (*Id.* at p. 645.)

The Supreme Court in *DeLeon* rejected this argument, adopting the United States Supreme Court's reasoning in *Spencer v. Kemna* (1998) 523 U.S. 1 [118 S.Ct. 978, 140 L.Ed.2d 43], in which the court held that the defendant's appeal from revocation of his parole was moot because he had completed the

entire term of imprisonment imposed because of his parole violation. (*De Leon, supra*, 3 Cal.5th at pp. 645-646; see *Spencer, supra*, at pp. 13-16.)

The United States Supreme Court in *Spencer* held the fact the defendant's parole revocation had collateral consequences, including the potential impact on a future parole proceeding or sentencing, did not show an injury in fact sufficient to avoid a mootness challenge. As to a future parole proceeding, the court found that this was only "a possibility rather than a certainty or even a probability" because under applicable law a prior parole revocation was only one factor to be considered by the parole authority. (*Spencer v. Kemna*, 523 U.S. at p. 14.) The court also rejected the argument that a potential increase in a future sentence was a sufficient collateral consequence "because it was contingent upon [the] respondents' violating the law, getting caught and being convicted," which the defendant was in a position to prevent from happening. (*Id.* at p. 15.) The court also noted that it was speculative whether the defendant's parole violation could be used to impeach him in a future criminal proceeding. (*Ibid.*)

The court in *DeLeon* similarly concluded, "Future consequences will not arise unless there is additional criminal conduct. Even then, his parole violation is just one of many factors a court may consider in deciding whether to grant probation, or what sentence to impose. Under these circumstances, [the defendant's] parole violation does not constitute a disadvantageous collateral consequence for purposes

of assessing mootness.” (*DeLeon*, *supra*, 3 Cal.5th at p. 646, fn. omitted.)⁵

Martinez contends *DeLeon* is distinguishable in that the custody time Martinez served for his parole violation could be used prospectively to impose a one-year sentence enhancement under section 667, subdivision (b), if he is convicted of a felony in the future. However, this is precisely the argument the Supreme Court rejected in *DeLeon* on the basis that the potential use of the parole violation in a future proceeding was contingent on the defendant committing another crime. While Martinez is correct that if he commits another crime he could face an additional sentence enhancement, this circumstance is within his control. Further, it is speculative whether he will commit a future crime and be convicted, resulting in an adverse consequence because he will not have been free from prison custody for a five-year period.

Under *DeLeon*, because Martinez has served the full sentence for his parole revocation and his parole supervision has since then terminated, Martinez’s appeal is moot. Because we decided the identical equal protection challenge in *Zamudio*, we decline to exercise our discretion to consider Martinez’s appeal on the ground the issue raised “is capable of repetition, might otherwise evade review and is of continuing public interest.” (*Zamudio*, *supra*, 12 Cal.App.5th at p. 12, fn. 3; accord, *DeLeon*,

⁵ The court in *DeLeon* disapproved contrary language in *People v. Osorio* (2015) 235 Cal.App.4th 1408, 1412, in which the court distinguished the holding in *Spencer*, concluding that the defendant’s release from parole did not render his appeal moot because his parole revocation could be used in a future sentencing determination or in an employment decision or child custody matter. (*DeLeon*, *supra*, 3 Cal.5th at p. 646.)

supra, 3 Cal.5th at p. 646; *People v. Osorio*, *supra*, 235 Cal.App.4th at p. 1412.)

“When events render a case moot, the court, whether trial or appellate, should generally dismiss it.’ [Citations.]” (*Schoshinski v. City of Los Angeles* (2017) 9 Cal.App.5th 780, 791; accord, *La Mirada Avenue Neighborhood Assn. of Hollywood v. City of Los Angeles* (2016) 2 Cal.App.5th 586, 590 [“Ordinarily, when, as here, a case becomes moot pending an appellate decision, the reviewing court will simply dismiss the appeal on the ground it can no longer grant any effective relief”].) Accordingly, we dismiss Martinez’s appeal as moot.

DISPOSITION

The appeal is dismissed as moot.

FEUER, J.*

We concur:

PERLUSS, P. J.

ZELON, J.

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