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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. KENNETH VANCE, Defendant and Appellant.	B271808 (Los Angeles County Super. Ct. No. 6PH02457)

APPEAL from an order of the Superior Court of Los Angeles County, Jacqueline H. Lewis, Judge. Affirmed.

Heather E. Shallenberger, 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, Victoria B. Wilson and Chung L. Mar, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant Kenneth Vance appeals from the order of the superior court revoking his parole. We affirm.

BACKGROUND

Appellant was convicted of second degree robbery (Pen. Code, 212.5)[1] and sentenced to four years in state prison. In November 2014, he was released on parole, with supervision scheduled to expire in April 2017.

On April 5, 2016, following appellant's arrest, the Los Angeles County District Attorney's Office filed a petition to revoke appellant's parole, alleging that he had violated the condition requiring him to obey all laws by committing aggravated trespass (§ 602.5, subd. (b)) and vandalism (§ 594, subd. (a)(2)). At the parole revocation hearing (which was combined with the probable cause hearing), the parties presented the following evidence.

Prosecution Evidence

According to appellant's parole agent, Alex Urtez, appellant was placed on parole in November 2014, and Agent Urtez had supervised him since November 2015. Appellant was designated "EOP," which indicated that he had some mental health issues. He had been referred to a "telecare" program that assisted him with medications and diagnosis, but he stopped attending. On March 14, 2016, Agent Urtez requested a warrant for appellant's arrest for absconding.

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1 All unspecified statutory references are to the Penal Code.

William Cox, who was 82 years old, testified that on the morning of March 25, 2016, he was inside his home on South Bryanhurst Avenue when he heard a commotion in the back room. He got up and walked to the kitchen and found appellant standing there. Cox told appellant to get out of his house. Appellant backed up and Cox pushed him. Appellant said, "Hey, get your hands off me. Don't touch me," and babbled incoherently. He left through the back door and went over the fence into the neighbor's yard.

At about 9:30 a.m. on March 25, 2016, Los Angeles Police Officer Chelico and other officers deployed around a nearby house on South Bryanhurst Avenue. The officers called out and two young women, later identified as Krystal Mora and Mia Mora, exited the house; they were "crying, scared, shaking." Appellant then exited the house through the front door and stated, "I give up." Officer Chelico observed a broken window on the door facing the backyard of the residence.

Officer Chelico also spoke to Cox, Hazel Harris, and Omara Allen at the scene, and he conducted three trespassing investigations, including investigations at 5728 South Bryanhurst (Harris's residence) and 6525 South Victoria Avenue (Allen's residence). After Officer Chelico spoke to the victims, appellant stated, "Help me. Help me. Somebody is after me." From appellant's behavior, the officers determined that appellant was "paranoid." Appellant was taken to the police station. After appellant complained of chest pain, the officers transported him to the hospital. Appellant was treated at the hospital, and blood work determined that appellant had methamphetamine in his blood.

Defense Evidence

Appellant testified in his own behalf. He described his past diagnosis as "schizophrenic mood disorders, bipolar, and anxiety." He had been prescribed medications, and was receiving them through the telecare program, but he "fell off track" and was "in and out of jail." He spent time in jail in March 2016, and received medication during his jail confinement; he did not receive medication after he left jail.

On March 25, 2016, some people were physically harassing him and attempting to take money. Appellant "panicked" and ran away, but they chased him. He came to a house on Bryanhurst and climbed the fence. He was "going to knock, but [he] just checked, and [the door] was already opened . . . so [he] just went in." He had no "intentions . . . to harm anyone."

Appellant was in the house for 5 to 10 seconds when the "old man," Cox, approached him "violently." Appellant kept asking him for help, but Cox said "no" and told him to leave. Appellant then went from house to house in attempt to get help.

At the house where he encountered the two young Hispanic girls, Krystal and Mia Mora, he "guess[ed] [he] didn't notice [his] own strength," and as he opened the door the window came out and broke. Ultimately, he heard the police knock on the door, and "so [he] just went out, and that was that." He acknowledged that he did not have permission to enter any of the homes.

Following brief argument, the trial court found appellant in violation of parole: "The Court has considered the evidence. Based on

the evidence, the Court finds by a preponderance of the evidence that it is true that Mr. Vance did violate the terms or conditions of his parole supervision by engaging in criminal conduct, specifically aggravated trespass [§ 602.5, subd. (b)]. [¶] In regards to the vandalism, which the People have plead, the 594(a), the Court cannot find that Mr. Vance broke the window maliciously. So the Court is finding that not to be true." The court revoked and restored parole on the same terms and conditions, and ordered appellant to serve 180 days in the county jail.

DISCUSSION

Section 3000.08, a provision of the Realignment Act of 2011, gives the superior court located in the county where the parolee is being supervised or the county in which a parole violation is alleged to have occurred the jurisdiction to hear petitions to revoke parole. (§ 3000.08, subd. (a); see *Department of Corrections & Rehabilitation v. Superior Court* (2015) 237 Cal.App.4th 1472, 1480.) A determination to revoke parole must be supported by a preponderance of the evidence (§ 3044, subd. (a)(5)), and on appeal we review such a determination for substantial evidence. (*People v. Kurey* (2001) 88 Cal.App.4th 840, 848 [probation].)

In the present case, appellant does not dispute the sufficiency of the evidence to support the trial court's finding that he committed aggravated trespass in violation of section 602.5, subdivision (b). Rather, he contends that because the petition for revocation did not state the relevant conditions of parole, and because the prosecution did not introduce evidence that a condition of his parole was that he obey

all laws, the evidence was insufficient to prove that his commission of aggravated trespass violated his parole. We disagree.

Parole revocation proceedings are initiated by the filing of a petition by the supervising parole agent under section 1203.2. (§ 3000.08, subd. (f).) "The petition shall include a written report that contains additional information regarding the petition, including the relevant terms and conditions of parole, the circumstances of the alleged underlying violation, the history and background of the parolee, and any recommendations." (§ 3000.08, subd. (f).) Under section 1203.2, subdivision (a), "the court may revoke and terminate the supervision of the person if the interests of justice so require and the court, in its judgment, has reason to believe from the report of the probation or parole officer or otherwise that the person has violated any of the conditions or his or her supervision . . . or *has subsequently committed other offenses, regardless of whether he or she has been prosecuted for those offenses*." (§ 1203.2, subd. (a), italics added.)

In the present case, the petition, prepared on the applicable Judicial Council form, alleged that appellant "has violated the following terms and conditions of supervision . . . . The supervised person failed to obey all laws." Attached to the petition was a written report summarizing the circumstances of appellant's alleged violations based on the police report regarding appellant's arrest on March 25, 2016, including his unlawful trespass into Cox's house and the breaking of the window of the Mora residence. The attachment alleged that appellant committed aggravated trespass and vandalism.

It is true that the written report did not contain information regarding "the relevant terms and conditions of parole" (§ 3000.08, subd. (f)), but the petition alleged that appellant violated the condition requiring him to obey all laws, and the written report summarized the alleged facts giving rise to that violation. In the trial court, appellant did not object that the petition was insufficient, and did not dispute that commission of a new offense would violate his parole. Having failed to object, any insufficiency in the petition or the written report attached to it was forfeited. (See *People v. Jennings* (1991) 53 Cal.3d 334, 356 [failure to demur to facial defect of information waives claim on appeal].)

Nor was the absence of evidence regarding the conditions of appellant's parole fatal to the court's finding appellant in violation of parole. Just as an implicit condition of probation is that the probationer not commit a new offense (*People v. Cortez* (1962) 199 Cal.App.2d 839, 844), such a condition is implicit in a grant of parole as well. As reasoned in *Cortez*, "Probation is granted to the end that a defendant may rehabilitate himself, make a responsible citizen out of himself and be obedient to the law. It is implicit in every order granting probation that the defendant refrain from associating with improper persons or engaging in criminal practices." (*Ibid.*) The same rationale applies to parole. Thus, even in the absence of evidence regarding the express terms of appellant's parole, the condition that he obey all laws was implicit. In any event, section 1203.2, subdivision (a) expressly grants the court the authority to revoke parole if the parolee "has subsequently committed other offenses, regardless of whether he or she has been

prosecuted for those offenses." That is precisely what happened here – the court found that defendant committed the offense of aggravated trespass in violation of section 602.5, subdivision (b), and revoked his parole on that basis.

In short, appellant's claim that the evidence was insufficient to support a revocation of his parole fails.

DISPOSITION

The order is affirmed.

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WILLHITE, J.

We concur:

EPSTEIN, P. J.

COLLINS, J.