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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. DANIEL GAFFNEY, Defendant and Appellant.	B281268 (Los Angeles County Super. Ct. No. 7PH00004)

APPEAL from an order of the Superior Court of Los Angeles County, Robert M. Kawahara, Judge. Affirmed.

Heather E. Shallenberger, 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, Senior Assistant Attorney General, and Michael C. Keller and Corey J. Robbins, Deputy Attorneys General, for Plaintiff and Respondent.

Following a contested parole revocation hearing, appellant Daniel Gaffney was found to have violated the terms and conditions of his parole by removing his global positioning system (GPS) monitoring device. The trial court revoked Gaffney's parole and ordered him to serve 180 days in county jail pursuant to Penal Code section 3010.10.[1] On appeal, Gaffney contends the trial court abused its discretion when it failed to give proper consideration to his mental state in deciding whether to revoke his parole and to impose a period of incarceration. We affirm.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

I. Petition for Revocation of Parole

Gaffney was released on parole on June 2, 2014. As a prior sex offender, he was subject to special conditions of parole. Among other conditions, Gaffney was required to wear a GPS monitoring device, with which he was not to tamper. On January 3, 2017, the California Department of Corrections and Rehabilitation (CDCR) filed a petition to revoke Gaffney's parole. The petition alleged that Gaffney had violated the conditions of his parole by removing his GPS device on December 27, 2016. A contested parole revocation hearing was held in February 2017.

II. The People's Evidence

Gaffney's parole agent, Chephren Johnson, testified for the People. According to Johnson, on December 27, 2016, sometime before 8:00 p.m., Gaffney called him and asked if he could spend the night at a friend's house. Johnson denied the request because he was unfamiliar with Gaffney's friend. Gaffney was "a little

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

unhappy" with Johnson's response, but he sounded calm on the phone and not particularly upset.

At approximately 8:16 p.m., Johnson received an alert that Gaffney's GPS device may have been removed. Johnson checked the location of the device and saw that it was stationary. Johnson attempted to contact Gaffney several times on his cell phone and left him a voicemail message. Johnson also sent an electronic ping to the GPS device, alerting Gaffney to call him. Gaffney did not respond to any of Johnson's efforts to reach him. Johnson then tracked the GPS device to a location in front of an apartment building, and found the device lying in a gutter. It appeared to Johnson that the ankle strap on the device had been cut. Johnson was unable to locate Gaffney.

The next morning, at around 8:00 a.m., Gaffney reported to the parole office. At that time, Gaffney told Johnson, "I called the FBI on all of you." When Johnson asked Gaffney why he would call the FBI, Gaffney refused to explain and merely responded, "You know what you did." In Johnson's opinion, Gaffney was acting irrationally and was not making any sense. After arresting Gaffney for a parole violation, Johnson transported him to the county jail. During the drive, Gaffney continued to talk about the FBI, and claimed that Johnson and others in the CDCR "were out to kill him."

Prior to Gaffney's arrest, Johnson was aware that Gaffney had significant mental health issues and had been diagnosed as paranoid schizophrenic. Johnson also was aware that Gaffney was under psychiatric care and taking psychotropic medication. At the time of his arrest, Gaffney admitted to Johnson that he had not been taking his medication. Johnson believed that this

incident was the first time Gaffney had any issues related to his GPS device during his period of parole.

III. The Defense Evidence

Gaffney testified on his own behalf. According to Gaffney, shortly before his arrest, he was placed on a new medication that did not work. He stopped taking the medication on December 27, 2016, and started to experience paranoia, which was "very scary" and made him feel like he was "facing death." On the evening of December 27, Gaffney called Johnson and asked for permission to spend the night at a friend's home. When Johnson refused to grant him permission, Gaffney began to have "bad feelings."

Gaffney further testified that, by 8:00 that night, he was in a "panic stage." He recalled "being in fear" and "trying to get help in all directions." Gaffney called the police department and 911 multiple times. He called the FBI shortly before 8:00 p.m., and told an agent about a conspiracy theory involving his cell phone. The agent laughed at Gaffney, and hung up. Gaffney then called the parole departments in Sacramento and Van Nuys, and left messages for his former parole officer, whom he trusted. At some point, Gaffney also went to a local hospital, but left after someone made fun of him.

Gaffney testified that he did not remember his GPS device being removed and did not know how it happened. He also did not know how he got from place to place that night. Gaffney recalled that a friend had dropped him off by the Van Nuys Police Department, which was near the location where the GPS device was found. He also recalled that he eventually walked to the parole office and waited there until the office opened at 8:00 a.m. Once the office opened, Gaffney went inside and immediately was placed under arrest.

IV. The Parole Revocation Order

Following the hearing, the trial court found that Gaffney willfully had violated the conditions of his parole by removing his GPS device. The court explained it had considered the evidence that Gaffney may have been experiencing a psychotic episode at the time the device was removed, but it was "not convinced that he really was." Instead, the court believed Gaffney potentially had created a ruse given the sequence of events between his request to his parole agent for permission to stay at a friend's house and his statement the next morning that he believed the agent was going to kill him. In reviewing Gaffney's actions during that 12-hour period, the court noted: "He wanted to spend time at another place. The agent told him he couldn't. He cut [the device] off. There is a reasonable conclusion that he did it to spend the night where he wanted to spend the night. And then the next morning he . . . had the wherewithal to come into the office . . . and then exhibit this condition." The court acknowledged that Gaffney had mental health issues, but found that, "with respect to the mental state at the time of removal, . . . he knew what he was doing, and he knew that was wrong."

The trial court concluded that, because Gaffney had violated the conditions of his parole by removing his GPS device, such conduct was "a violation of Penal Code section 3010.10," and "[t]he court [was] required to impose 180 days of county jail." The court accordingly revoked Gaffney's parole, ordered that he be confined to county jail for a period of 180 days, and ordered that his parole be restored on the same terms and conditions upon the completion of his jail term. On March 3, 2017, Gaffney filed a notice of appeal from the trial court's parole revocation order.

DISCUSSION

On appeal, Gaffney argues that the trial court abused its discretion in issuing the parole revocation order. He specifically asserts that the trial court failed to consider his mental state in deciding whether to revoke his parole, and failed to exercise its discretion in determining what consequence to impose for the parole violation. We conclude that these arguments lack merit.

I. Mootness

As a preliminary matter, we address whether Gaffney's appeal from the parole revocation order is moot. The Attorney General contends that the appeal is moot because Gaffney would have completed the 180-day jail term imposed for the parole violation no later than May 12, 2017, and thus, he would "have served his sentence before this appeal is resolved." In support of this contention, the Attorney General cites to the decisions in *Spencer v. Kemna* (1998) 523 U.S. 1 (*Spencer*) and *People v. DeLeon* (2017) 3 Cal.5th 640 (*DeLeon*).

In *Spencer*, the United States Supreme Court held that a petition for writ of habeas corpus seeking to invalidate a parole revocation order was moot because the petitioner already had completed the entire term of imprisonment underlying the parole revocation. (*Spencer*, *supra*, 523 U.S. at pp. 12-14.) In so holding, the Supreme Court rejected the argument that the petitioner faced "collateral consequences" from the potential use of his parole violation in a future parole proceeding. (*Id.* at p. 14.) The Court reasoned that this possibility did not show an injury in fact because it was contingent upon the petitioner again violating the law, a circumstance that was within his control. (*Id.* at p. 15.) In addition, a prior parole violation did not mandate a

particular consequence, but was simply one factor that could be considered in a discretionary decision by the parole authority. (*Id*. at p. 14.)

Relying on *Spencer*, the California Supreme Court in *DeLeon* held that an appeal from a parole revocation order was moot because the defendant had completed the jail term that had been imposed for the parole violation and had been discharged from parole. (*DeLeon*, *supra*, 3 Cal.5th at pp. 645-646.) As a result, "a reviewing court's resolution of the issues could offer no relief regarding the time he spent in custody or the parole term that has already terminated." (*Id.* at p. 645.) In reaching this conclusion, the Court rejected the defendant's claim that his appeal was not moot because he faced disadvantageous collateral consequences from the fact that he had been found in violation of parole. Rather, adopting the analysis in *Spencer*, the *DeLeon* court concluded: "The trial court's finding that DeLeon violated his parole does not involve the same collateral consequences that attach to a criminal conviction. 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, DeLeon's parole violation does not constitute a disadvantageous collateral consequence for purposes of assessing mootness."[2] (*Id*. at p. 646.)

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[2] Although the Supreme Court in *DeLeon* concluded that the appeal was moot, it exercised its discretion to address the merits because it found that the legal question raised regarding the right to a preliminary hearing when facing parole revocation was an issue that was "'likely to recur, might otherwise evade appellate review, and [was] of continuing public interest." (*DeLeon*, *supra*, 3 Cal.5th at p. 646.) Gaffney does not contend

In his reply brief, Gaffney argued that *Spencer* and *DeLeon* were distinguishable because the parolees in those cases had not only been released from county jail, but also had completed their sentences on the underlying offenses, and thus, they were no longer under parole supervision when their appeals were heard. Gaffney further asserted that, unlike those defendants, he was still under parole supervision because his additional time in custody for the parole violation had the effect of extending his period of parole. (See § 3000, subd. (b)(6) ["Time during which parole is suspended because the prisoner . . . has been returned to custody as a parole violator shall not be credited toward any period of parole unless the prisoner is found not guilty of the parole violation."].) This argument would be persuasive if the record demonstrated that Gaffney was still under parole supervision at this time. However, according to the petition filed by the CDCR, Gaffney's period of parole was set to expire on June 1, 2017; as extended by the 180-day term in county jail, his parole discharge date would have been November 28, 2017. Therefore, while Gaffney may have been under parole supervision when he filed his reply brief on October 25, 2017, it appears this may no longer be the case. If so, under *Spencer* and *DeLeon*, Gaffney's discharge from parole would render his appeal moot because he could not be granted any effective relief regarding the custodial time that was ordered as a consequence of the parole violation or the period of parole that has expired. However, because the record on appeal does not affirmatively

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the issues raised in his appeal are likely to recur or are of continuing public interest.

demonstrate whether Gaffney has been discharged from parole, we will address the merits of his appeal.

II. The Trial Court Did Not Err In Revoking Gaffney's Parole and Imposing the 180-Day Jail Term

Gaffney does not dispute that he violated the conditions of his parole by removing his GPS device. Rather, he argues that the trial court abused its discretion in revoking his parole and in ordering a 180-day jail term because the court failed to properly consider Gaffney's mental impairment at the time the device was removed. Gaffney also asserts that the trial court erred because it incorrectly believed that it lacked any discretion in deciding what consequence to impose for the parole violation.

In general, section 1203.2 authorizes a court to revoke parole "if the interests of justice so require and the court, in its judgment, has reason to believe from the report of the . . . parole officer or otherwise that the person has violated any of the conditions of his or her supervision." (§ 1203.2, subd. (a).) The violation must be willful to justify the revocation. (*People v. Gonzalez* (2017) 7 Cal.App.5th 370, 382, disapproved on another ground in *DeLeon*, *supra*, 3 Cal.5th at p. 646.) A trial court's finding that a person has violated a condition of parole or probation is reviewed for substantial evidence. (*People v. Buell* (2017) 16 Cal.App.5th 682, 687; *People v. Urke* (2011) 197 Cal.App.4th 766, 773.) An order revoking parole or probation is reviewed for an abuse of discretion. (*People v. Rodriguez* (1990) 51 Cal.3d 437, 447; *People v. Urke*, *supra*, at p. 773.)

Contrary to Gaffney's claim on appeal, the record reflects that the trial court did give proper consideration to Gaffney's mental state in deciding whether he had violated a condition of

his parole. Indeed, after hearing all of the evidence at the parole revocation hearing, the trial court expressly found that, "with respect to [Gaffney's] mental state at the time of removal, . . . he knew what he was doing, and he knew that was wrong." In making this finding, the court noted that it understood Gaffney had been "diagnosed with mental disabilities," and that there was no dispute as to that fact. The court explained, however, that it was "not convinced" by the testimony that Gaffney may have been experiencing paranoid delusions at the time he removed his GPS device. Rather, based on the evidence, the court believed that Gaffney deliberately had cut the device so that he could spend the night at a friend's house and then feigned a psychotic episode the next morning as part of a ruse to avoid responsibility for his actions.

Once the trial court found that Gaffney had violated a condition of his parole by removing his GPS device, the court properly revoked his parole and ordered that he be confined in county jail for a period of 180 days. The record reflects that the CDCR sought the revocation of Gaffney's parole under section 3010.10 because Gaffney was a registered sex offender. Section 3010.10, subdivision (b) provides that "[a] person who is required to register as a sex offender pursuant to Section 290 shall not remove, disable, render inoperable, or knowingly circumvent the operation of . . . an electronic, GPS, or other monitoring device affixed to his or her person as a condition of parole, when he or she knows that the device was affixed as a condition of parole." (§ 3010.10, subd. (a).) Subdivision (f) of the statute sets forth the penalty for knowingly removing a GPS device, and states that, "[u]pon a violation of subdivision (b), the parole authority shall revoke the person's parole and require that he or she be

incarcerated in a county jail for 180 days." (§ 3010.10, subd. (e). At Gaffney's parole revocation hearing, the trial court found that his willful removal of his GPS device was "a violation of Penal Code section 3010.10," and thus, [t]he court is required to impose 180 days of county jail." Because a 180-day period of confinement is mandatory for a violation of section 3010.10, subdivision (b), the trial court did not err in imposing this term as a consequence of Gaffney's parole violation.

DISPOSITION

The order revoking Gaffney's parole and imposing a 180-day period of confinement in county jail is affirmed.

ZELON, J.

We concur:

PERLUSS, P. J.

BENSINGER, J.*

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