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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

FEDERICO FERNANDEZ,

Defendant and Appellant.

B237670

(Los Angeles County
Super. Ct. No. VA107182)

APPEAL from a judgment of the Superior Court of Los Angeles County, Lori A. Fournier, Judge. Affirmed with directions.

Juliana Drous, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Kenneth C. Byrne, Supervising Deputy Attorney General, and Baine P. Kerr, Deputy Attorney General, for Plaintiff and Respondent.

The trial court revoked Federico Fernandez's probation and sentenced him to the maximum period of confinement. Fernandez appealed. We affirm and order correction of the abstract of judgment.

BACKGROUND

At a preliminary hearing on September 30, 2008, Edward Park testified that on July 2, 2008 at about 1:00 a.m., he and a female companion got out of his car near Guppy's restaurant in Cerritos. A group of men "holler[ed]" at his companion, and he told them to stop. The group ran toward Edward Park, one of the group, Fernandez, holding a bottle behind his back. Workers at Guppy's came outside, including Chris Park. The group ran up to Chris Park; Fernandez hit Chris Park over the head with the bottle. Chris Park testified that the resultant cut on his head required eleven stitches.

Working at Guppy's at the time of the incident, Victor Lee, an acquaintance of Edward Park's came outside and told Fernandez and the others to leave. The group yelled at Lee; soon Lee was fighting on the ground with someone else. Fernandez tried to jump on Lee. Edward Park hit Fernandez. When a member of the group retrieved a bat from a car, Fernandez grabbed the bat and hit Edward Park with it, bruising and causing swelling to Edward Park's hand and shin. The group then left.

An information filed October 15, 2008 charged Fernandez with three counts of assault with a deadly weapon, in violation of Penal Code section 245, subdivision (a)(1).¹ Fernandez pleaded no contest to one count on February 19, 2009. On June 1, 2009, the trial court dismissed the two remaining counts, suspended the imposition of sentence, and placed Fernandez on formal probation for 36 months. The terms of probation required Fernandez (among other terms) to complete 240 hours of community service and 52 weeks of anger management counseling, and to abstain from drinking alcoholic beverages.

On April 12, 2010, the trial court preliminarily found Fernandez in violation of his probation, because he had been held to answer in a second case. The court revoked

¹ All subsequent statutory references are to the Penal Code.

probation and set a probation revocation hearing to trail the second case. On November 18, 2010, Fernandez admitted that he had violated his probation,² and the court reinstated his original probation on the same terms and conditions, except that Fernandez waived all credits for time previously served.

Eleven months later, on October 18, 2011, the trial court again revoked Fernandez's probation, based on a probation officer's report that Fernandez had been arrested for driving under the influence, had not completed community service, and had failed to enroll in the anger management program. At a hearing on November 21, 2011, the probation officer assigned to Fernandez testified that Fernandez had not provided proof of completion of community service or anger management. A Garden Grove police officer testified that at 3:30 a.m. on June 8, 2011, he stopped Fernandez's car because a lighted cigarette was thrown out of the passenger window. The smell of alcohol emanated from the vehicle; Fernandez, who was driving, acknowledged he had been drinking. The officer administered a field sobriety test and based on its results (including Fernandez's bloodshot, watery eyes, slurred speech, and unsteady gait), the officer arrested Fernandez. A subsequent blood test showed an alcohol level of .16. Fernandez's father testified that he drove Fernandez to the probation department meetings, and that Fernandez was unable to find appropriate anger management classes in Orange County and did not attend classes in Los Angeles County. The father also took Fernandez to register for Caltrans work but not to perform the work.

The court concluded: "Mr. Fernandez, you are a 24-year-old man who apparently, if you're not being driven somewhere by your parent, you're getting into trouble. [¶] You since being placed on probation in February of 2009 . . . , you have had a number of probation violations. This is not the first. In June of 2009 you were again found in violation. That was your first violation. Then in November of 2010, another violation. And they seem to be of increasing seriousness. And they are troubling to me. You were told February 19, 2009, all of the conditions of your probation. One of them was: do not

² Fernandez pleaded no contest to a misdemeanor charge in the second case.

drink any alcoholic beverages. Complete the anger management and complete community service or Cal Trans [sic]. [¶] Judge O’Connel re-advised you on June 1, 2009, to do all of the same things. And when you were found in violation on November 18, 2010, for the violation of . . . section 32, you were given another opportunity at probation to prove that you’re an appropriate candidate for probation. That’s what probation is about, to show that you should not be going to state prison. You got an extreme gift when you were originally given probation for taking a bat to someone’s head and causing a large laceration on the right side of their neck. And instead of doing what you’re supposed to do, you continue to commit other crimes, including the latest driving under the influence incident where whether or not you had a rising blood alcohol, whatever the issue is, you were drinking, which you were specifically advised not to do. [¶] So I find that you are in violation of probation based on my review of the court file, the minute orders, the transcripts, the officer’s testimony as well as the probation officer’s testimony.”

The court added: “I did weigh the factors in aggravation as opposed to the factors in mitigation. And to be clear, I find that . . . the aggravating factors outweigh the mitigating factors [¶] . . . Rules of Court[, rule] 4.432[](b) factors relating to the defendant: The defendant has engaged in violent conduct that indicates a serious danger to society. [¶] Factor 2, the defendant’s prior convictions as an adult are numerous or of increasing seriousness. [¶] Factor 4, the defendant was on probation or parole when the crime was committed. [¶] And Factor 5, defendant’s prior performance on probation was unsatisfactory. [¶] As to factors relating to the crime, the crime that he was convicted of . . . involved great violence, great bodily harm, threat of bodily harm, or other facts disclosing a high degree of cruelty, viciousness or callousness. [¶] The defendant was armed or used a weapon at the time of the commission of the crime. [¶] I didn’t find any factors in mitigation.”

The court sentenced Fernandez to the maximum term of four years in state prison for a violation of section 245, subdivision (a)(1), and among other terms, imposed a \$40 court security fee pursuant to section 1465.8. Fernandez filed this timely appeal.

DISCUSSION

Fernandez argues that the trial court abused its discretion when it imposed the high term of four years in state prison. This claim fails.

At the hearing, Fernandez made no objection to the court's imposition of the high term or its stated reasons for the sentence. "[C]laims deemed waived on appeal involve sentences which, though otherwise permitted by law, were imposed in a procedurally or factually flawed manner." (*People v. Scott* (1994) 9 Cal.4th 331, 354.) When, as here, a defendant "argues only that the court exercised its otherwise lawful authority in an erroneous manner under the particular facts . . . [t]raditional objection and waiver principles encourage development of the record and a proper exercise of discretion in the trial court." (*Id.* at p. 355.) Therefore, "complaints about the manner in which the trial court exercises its sentencing discretion and articulates its supporting reasons cannot be raised for the first time on appeal." (*Id.* at p. 356.)

In any event, we note that the trial court did not abuse its discretion. The court found six factors in aggravation, and no mitigating circumstances. The existence of only one aggravating circumstance is sufficient to support imposition of the upper term. (*People v. Black* (2007) 41 Cal.4th 799, 813.) Even if we were to consider and decide in his favor all of Fernandez's specific challenges to the trial court's findings on the six aggravating factors, ample circumstances in aggravation would remain. Fernandez has not demonstrated that the sentence was arbitrary or irrational. (See *People v. Lamb* (1988) 206 Cal.App.3d 397, 401.) Thus, he has not shown that there is a reasonable probability that his counsel's failure to object prejudiced him; Fernandez, therefore, has also failed to demonstrate ineffective assistance of counsel. (*Strickland v. Washington* (1984) 466 U.S. 668, 694 [104 S.Ct. 2052, 80 L.Ed.2d 674].)

Respondent concedes that the trial court erred in ordering Fernandez to pay a \$40 court security fee under section 1465.8, because at the time of Fernandez's no contest

plea in February 2009, the fee was \$20. We therefore order that the abstract of judgment be modified to reflect a court security fee of \$20.³

DISPOSITION

The trial court is ordered to correct the abstract of judgment to reflect a court security fee of \$20, and to forward a corrected certified copy to the Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

MALLANO, P. J.

CHANEY, J.

³ Fernandez withdrew his third claim regarding custody credits following the trial court's modification of his credits.