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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. DONNA BANGAH-HARRINGTON, Defendant and Appellant.	A106956 (Solano County Super. Ct. No. FCR208894)

Donna Bangah-Harrington appeals her sentence to state prison (Cal. Rules of Court, rule 30(b)(4)). Her court-appointed counsel has filed a brief that raises no issues and asks this court to independently review the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436.

On June 29, 2003, appellant was subjected to a consensual parole search in which .6 grams of rock cocaine was found in her purse. A complaint was promptly filed, charging appellant with violation of Health and Safety Code section 11350, subdivision (a), and alleging that she suffered a prior conviction in 1998, also for a nonviolent drug possession offense. (Pen. Code, § 667.5, subd. (b).)[1] On July 1, 2003, the district attorney filed a declaration that appellant was eligible for drug treatment pursuant to section 1210.1, which implements Proposition 36. On July 14, 2003, appellant entered a change of plea to no contest, admitted the charged violation and prior prison term allegation, and waived her right to a preliminary hearing.

Due to appellant's long history of drug use and her many aliases (the complaint indicates the use of 21), the court was unwilling to immediately admit appellant to probation under the Proposition 36 drug treatment program prescribed by section 1210. Therefore, after taking appellant's plea and stating that the indicated sentence would be probation and drug treatment pursuant to section 1210.1, the court ordered that appellant be evaluated for such treatment by the probation department "to ensure that you are entitled to be placed into this program."

The probation department recommended treatment under section 1210.1, and the court accepted the recommendation. On August 11, 2003, the court placed appellant on three years' formal probation, granted custody credits, and imposed the requisite fines and fees (§§ 1202.4, 1203.1) and other conventional terms of probation, including submission to drug tests twice a week. The court also ordered appellant to appear on August 18, 2003 at an orientation meeting for the section 1210.1 drug treatment program.

Appellant failed to appear at the meeting. On August 28, 2003, her probation was summarily revoked and a bench warrant issued. She was arrested on November 10 and, at a hearing on November 18, appellant admitted her violation of probation. Counsel explained that appellant's mother had recently suffered a heart attack and that appellant, who also had serious health problems, was scheduled for surgery. The court noted that the instant offense is appellant's "tenth drug related conviction and her fifth felony conviction, and it would appear that [appellant] is on this course of using drugs and defying any orders that are made to try to assist her." Nevertheless, the court reinstated probation and drug treatment pursuant to section 1210, though this time it required appellant to remain in custody. The court referred appellant back to the section 1210 drug treatment, leaving "it up to the 1210 treatment program to determine whether or not [appellant] should be admitted to an outpatient treatment program . . . or an inpatient treatment program."

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[1] All statutory references are to the Penal Code unless otherwise indicated.

For about a month appellant complied with the treatment program; however, she failed to appear in court on December 9, 2003, as ordered, and probation was again revoked and another bench warrant issued. Appellant admitted the violation, which her attorney attributed to her many health problems. The court continued the matter for a supplemental probation report and reconsideration of the appropriateness of section 1210.1 drug treatment. The supplemental report concluded that, due to her repeated failures to comply with probation and her need for medical care, appellant could no longer be deemed suitable for such treatment. Accordingly, the report recommended the high term of three years in state prison, plus a one-year enhancement under section 667.5, subdivision (b).

At a hearing on April 23, 2004, the court suspended proceedings and appointed a psychologist to evaluate appellant for placement in the California Rehabilitation Center (CRC). The psychologist, Dr. Kathleen O'Meara, concluded that appellant was clinically depressed and physically debilitated as a result of ovarian cysts and stated that a placement other than CRC "might be of potential benefit."

At a hearing on May 21, 2004, appellant's attorney asked the court to order appellant placed in a residential treatment program, although counsel admitted the unlikelihood such a program was available. Noting that appellant was not receiving the psychiatric and medical treatment she needed, counsel asked that appellant again be placed on probation or, if the court was no longer willing to do so, that appellant receive a prison sentence no longer than three years.

Noting appellant's criminal record and repeated failures to comply with the terms of parole and probation, the court concluded that appellant was unamenable to drug treatment and therefore could no longer be deemed eligible for treatment pursuant to section 1210. Denying probation, the court sentenced appellant to the midterm of two years for the charged offense, and imposed the one-year enhancement for the prior prison term, for a total term of three years in state prison. The court imposed the $600 fines prescribed by sections 1202.4 and 1202.45, and awarded appellant custody credit for 174 days.

Notice of appeal was timely filed on June 14, 2004.

A trial court may revoke probation "if the interests of justice so require and the court, in its judgment, has reason to believe from the report of the probation officer or otherwise that the person has violated any of the conditions of his or her probation . . . ." (§ 1203.2, subd. (a); see *Lucido v. Superior Court* (1990) 51 Cal.3d 335, 348.) The standard of proof for establishing a violation of probation is a preponderance of the evidence, which vests the court with very broad discretion. (*People v. Rodriguez* (1990) 51 Cal.3d 437, 443.) Absent manifest abuse, the exercise of such discretion is not disturbed by the appellate courts. (See *In re Dearo* (1950) 96 Cal.App.2d 141, 143; *In re Gonzalez* (1974) 43 Cal.App.3d 616, 619-620.) Denial of probation in this case was clearly not an abuse of discretion.

Our review of the record shows that appellant was represented by able counsel throughout the proceedings, there was no sentencing error, and there are no other legal issues that require further briefing.

Accordingly, the order revoking appellant's probation and the sentence imposed are affirmed.

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Kline, P.J.

We concur:

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Haerle, J.

_____
Lambden, J.