Filed 4/1/10 P. v. Gray CA4/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. MORRIS PAT GRAY, Defendant and Appellant.	E048353 (Super.Ct.No. FBA700144) OPINION

APPEAL from the Superior Court of San Bernardino County. Steven A. Mapes, Judge. Affirmed.

Marisa L. D. Conroy, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, and Rhonda Cartwright-Ladendorf, Collette C. Cavalier, and Scott C. Taylor, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant and defendant Morris Pat Gray was charged with inflicting corporal injury on a cohabitant. (Pen. Code, § 273.5, subd. (a).)[1] Pursuant to a plea agreement, he pled no contest to the lesser included offense of false imprisonment. (§ 236.) Defendant was placed on probation for a period of three years. Subsequently, the court found he violated two of his probation conditions. The court revoked defendant's probation and sentenced him to three years in state prison.

On appeal, defendant contends there was insufficient evidence to establish that he willfully failed to complete a domestic violence batterer's treatment program. We disagree and affirm.

PROCEDURAL BACKGROUND

Defendant was placed on probation for three years, pursuant to his plea agreement. Initially, the probation terms included the requirement that he complete an anger management course. On January 25, 2008, his probation terms were modified to require that he complete a domestic violence batterer's treatment program (term 15) (the program) instead of the anger management course. Defendant agreed to the change.

On March 21, 2008, defendant's probation officer filed a petition for revocation of probation, alleging that defendant had violated his conditions of probation by failing to cooperate with the probation officer in a plan of rehabilitation, and by failing to complete the required program. Defendant failed to appear at the revocation hearing, so the court summarily revoked his probation and issued a bench warrant.

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[1] All further statutory references will be to the Penal Code unless otherwise noted.

Defendant appeared at a probation revocation hearing on March 27, 2008, so the court recalled the bench warrant. Defense counsel informed the court that defendant had an appointment that day to enroll in the program. Thus, the court trailed the matter to April 7, 2008, to allow defendant time to bring proof of enrollment in the program. The court later extended that deadline to April 14, 2008. On April 14, 2008, defendant showed proof of enrollment in the program. The court ordered him to complete the program by May 31, 2009.

On October 8, 2008, the court received notice that defendant had been terminated from the program. The notice indicated that defendant had not attended any sessions. The court summarily revoked probation and again issued a warrant for defendant's arrest.

On December 1, 2008, defendant appeared in court and denied the allegation that he was in violation of his probation.

On February 5, 2009, the court held another hearing and suspended the proceedings at the request of defense counsel. The court then appointed a medical commission under section 1368 to have defendant examined regarding his mental competence. On March 5, 2009, after reviewing the reports of two doctors, the court found defendant mentally competent and reinstated the criminal proceedings.

The court held a probation revocation hearing on March 26, 2009. The prosecution and defense counsel stipulated that in April 2008, defendant went to the Oasis House (Oasis) to check in for the program. The program director told him he could not participate in the group program there until he had been examined by a mental health

doctor. It took six months for defendant to go to the Mental Health Center and be seen by a doctor, and that doctor said he could not participate in the Oasis group program. Probation Officer Elizabeth Rodriguez testified that defendant enrolled in the program, but never attended it. Moreover, he never attempted to talk to the probation department about not completing the program. She testified that, from September 16, 2008 on, defendant never saw any probation officer.

Defendant testified on his own behalf at the hearing. He confirmed he was told that he must complete the program as a condition of his probation. He testified that he went to Oasis and enrolled, but was not allowed to participate in the program. Defendant said he was told he had to get a psychological evaluation because of his "extensive violence and hostile takeovers." He said it took him seven months to see a psychiatrist. After being evaluated, he returned to Oasis, but was not allowed to participate in the program. Defendant testified that he "wasn't cleared for classroom activity or something because [he] wouldn't take medication." He was also told that he could not return to the program because he told the psychiatrist that he "had a direct line to God."

In rendering its decision to find that defendant violated the conditions of his probation, the court stated: "I do think the People have proven by a preponderance of the evidence that he failed to comply with Term 15 and that he is in willful violation [of] Term 15. And I think that if he was having trouble, and he had already had trouble on this term before, and it had been reinstated once before, so he could have come to court, asked for an extension, gone to his attorney, he had an attorney, asked for help on this,

gone to probation, told them this, gone back to Oasis House, told them this. [¶] Knowing [defendant] has been to prison before, he's got a criminal history, he knows that there are consequences to not complying with the terms and conditions of the conditional release, be it parole or probation. And so he knew what he was in for. [¶] And I agree with the district attorney's analysis that he chose to let it ride based on the fact that some medical doctor told him . . . he wouldn't approve him for a group program. Nonetheless, his program was due. So he did nothing about it. I think he probably was hoping to slide on it. So I do think that's a willful violation of probation. [¶] And that would technically violate Term 4, failure to cooperate in a plan of rehabilitation, because Term 15 is part of that plan. So I . . . find him in violation on a preponderance of the evidence of Terms 4 and 15 . . . ." The court revoked probation and sentenced defendant to the upper term of three years in state prison.

ANALYSIS

There Was Sufficient Evidence to Support the Trial Court's Finding that Defendant Willfully Violated His Probation

Defendant contends there was insufficient evidence to prove he willfully violated the term of his probation requiring him to complete the program. He asserts that he did not willfully violate this condition since he was prohibited by the psychiatrist from attending the program. Defendant adds that, since the court also found him in violation of failing to cooperate with the probation officer in a plan of rehabilitation based on his

failure to complete the program, he did not willfully violate that term either. We disagree.

A. *Relevant Law*

"Trial courts are granted great discretion in deciding whether or not to revoke probation. [Citation.]" (*People v. Kelly* (2007) 154 Cal.App.4th 961, 965.) "A 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 . . . .' [Citation.] 'As the language of section 1203.2 would suggest, the determination whether to . . . revoke probation is largely discretionary.' [Citation.] '[T]he facts supporting revocation of probation may be proven by a preponderance of the evidence.' [Citation.] However, the evidence must support a conclusion the probationer's conduct constituted a willful violation of the terms and conditions of probation. [Citation.]" (*People v. Galvan* (2007) 155 Cal.App.4th 978, 981-982; § 1203.2, subd. (a).)

B. *The Evidence Was Sufficient*

The evidence undisputedly showed that defendant failed to complete the program as required by the terms of his probation. On January 25, 2008, he was ordered to complete a 52-week domestic violence batterer's treatment program and he confirmed that he understood that violating the condition could result in revocation of his probation.

After the court summarily revoked his probation in March 2008 for failing to complete the program and failing to cooperate in a plan of rehabilitation, the court

allowed him time to show proof of enrollment in a program. On April 14, 2008, defendant showed proof of enrollment in the program. The court ordered him to complete the program by May 31, 2009. When defendant went to Oasis to check into the program, the program director told him he needed a psychological evaluation done before he could participate. According to the probation officer, the doctor who evaluated him told him he could not participate in the program at Oasis. Defendant testified that he "wasn't cleared for classroom activity or something because [he] wouldn't take medication." He was also told that he could not return to the program because he told the psychiatrist that he "had a direct line to God."

Defendant asserts, as he did at the revocation hearing, that he did not willfully fail to complete the program, but he was not allowed to participate in the program at Oasis, pursuant to the psychiatrist's evaluation. However, as noted by the prosecution, defendant admitted it took him seven months to be evaluated. Furthermore, after he was told he could not participate in the group program, he never attempted to talk to the probation department about not being able to complete that program. Defendant never informed the probation department that he was having trouble complying with that probation condition and never asked about alternatives to the Oasis group program. Instead, as noted by the court, he did nothing. He made no further efforts to comply with the condition of probation. The court also noted that defendant had previously had trouble with this condition and had had it reinstated once before. Thus, defendant could have come to the court, asked for an extension, asked his attorney for help, or asked

Oasis for help. At the time the court ordered him to complete the program, defendant confirmed that he understood that violating the condition could result in revocation of his probation. Nonetheless, he "chose to let it ride based on the fact that some medical doctor told him . . . he wouldn't approve him for a group program."

Defendant argues there was insufficient evidence to support the court's finding regarding defendant's lack of action. He asserts there was no evidence presented that he "did or did not contact the court," or that he "did or did not contact his attorney." We presume that, had defendant contacted his counsel or the court regarding his difficulty complying with his probation condition, his counsel and/or the court would have acknowledged such contact at the revocation hearing. More importantly, as stated above, there was evidence that defendant never informed the probation department he was having problems complying with his probation conditions.

On this record, we have no trouble finding that the evidence supported the trial court's conclusion that defendant willfully violated his probation. The court was well within its discretion in concluding that defendant willfully failed to complete the program, and, consequently, that he failed to cooperate in a plan of rehabilitation.

In his reply brief, defendant raises the issue that the court's ruling was in error because it was based on the assumption that a doctor would not approve him for a *group* program. Defendant specifically claims the record does not contain any evidence that defendant "was only not approved for a group program." We initially note that defendant did not raise this issue in his opening brief. "Withholding a point until the reply brief

deprives the respondent of an opportunity to answer it . . . . Hence, a point raised for the first time therein is deemed waived and will not be considered, unless good reason is shown for failure to present it before. [Citations.] No good cause is shown here." (*People v. Baniqued* (2000) 85 Cal.App.4th 13, 29, fn omitted.) Furthermore, contrary to defendant's claim, the record clearly shows that when the court inquired about whether he was prevented from participating in a program at Oasis before getting a psychiatric evaluation, defense counsel twice confirmed that the program at issue was a group program.

DISPOSITION

The judgment is affirmed.

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HOLLENHORST
J.

We concur:

RAMIREZ
P.J.

MCKINSTER
J.