

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

PEDRO RAMIREZ SALAS,

Defendant and Appellant.

B237003

(Los Angeles County
Super. Ct. Nos. BA284803 and
BA384164)

APPEAL from the judgment of the Superior Court of Los Angeles County. Rand S. Rubin, Judge. Affirmed.

Jolene Larimore, 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, Paul M. Roadarmel, Jr., and Nima Razfar, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Pedro Ramirez Salas appeals from the execution of a suspended sentence on a 2005 robbery conviction following a probation revocation hearing. Defendant contends the summary revocation of probation in 2006 on the ground that he had absconded was unlawful since he had been deported and did not willfully fail to report to probation. Since the summary revocation of probation was unlawful, he claims, the probationary period was not tolled. He argues that his 2011 assault conviction occurred after probation expired in the 2005 case, so the court lacked jurisdiction to execute sentence on the 2005 robbery conviction. Defendant principally relies on *People v. Tapia* (2001) 91 Cal.App.4th 738 (*Tapia*) and its interpretation of the tolling provision contained in Penal Code section 1203.2, subdivision (a).¹

The tolling provision, set forth in the last sentence of section 1203.2, subdivision (a), provides that “[t]he revocation [of probation], summary or otherwise, shall serve to toll the running of the probationary period.”² The tolling provision in section 1203.2, subdivision (a) is unambiguous on its face. We reject defendant’s argument and decline to follow *Tapia*, concluding that, because of the tolling provision, defendant’s original probationary term had not expired and the court had jurisdiction in 2011 to revoke probation and execute defendant’s suspended sentence.³ We therefore affirm.

¹ All further undesignated section references are to the Penal Code.

² The quoted language is the version of the statute in effect at the time of the challenged order. Effective June 27, 2012, the tolling provision was amended to read that the revocation “shall serve to toll the running of the period of supervision.” (Stats. 2012, ch. 43, § 30.) The amendment was part of the 2011 Realignment Legislation and is immaterial to our analysis and disposition. All further references to the tolling provision at section 1203.2, subdivision (a) shall be to the version of the statute in effect before the 2012 amendment.

³ The issue presented is currently pending before the Supreme Court. (See *People v. Leiva*, review granted June 15, 2011, S192176.)

FACTUAL AND PROCEDURAL BACKGROUND

In June 2005, defendant was charged with one count of second degree robbery (§ 211). It was also specially alleged defendant personally used a knife in the commission of the robbery (§ 12022, subd. (b)(1)). The charges arose from an incident in which defendant confronted a man, threatened him with a knife, and forcibly took money and a necklace from him. Defendant pled no contest to the robbery charge and admitted the personal use of a dangerous weapon allegation. The court, in accordance with the plea agreement, imposed a sentence of four years in state prison, consisting of the mid-term of three years on the substantive offense, and a consecutive one-year term for the special allegation. The court then suspended execution of sentence and granted defendant five years' probation on the condition, among others, that he serve 180 days in county jail. The court also imposed the standard terms of probation requiring defendant to report to probation within 48 hours of release from custody and to keep probation informed at all times of his home and work addresses and telephone numbers. The court ordered defendant to pay various fines and restitution. Defendant was awarded custody credits and remanded to serve the time remaining on the county jail sentence.

In January 2006, the probation officer assigned to defendant's case reported to the court that defendant had never reported to probation, had never paid any of the fines or the victim restitution, and had apparently been deported to Guatemala about six weeks after defendant's scheduled release from custody. The court summarily revoked defendant's probation and issued a bench warrant for defendant's arrest.

Defendant returned to the United States, and new charges were filed against him arising from an incident in May 2011 in which defendant assaulted two brothers outside of a liquor store. Defendant pushed one of the brothers to the ground with such force that he struck his head on the pavement and suffered severe brain injury. Following defendant's arrest on the new charges in the 2011 case, the court recalled and quashed the bench warrant issued in 2006, and set a formal probation revocation hearing to follow trial in the 2011 case. Defendant was convicted by jury of assault on one of the brothers (§ 240) and acquitted of the other charges. The court sentenced defendant to 180 days in

county jail and imposed various fines and penalties. Defendant was awarded custody credits and released in the 2011 case for time served. At the continued probation revocation hearing, the court found defendant was in violation of probation. The court revoked probation and executed the suspended four-year sentence with custody credits. This appeal followed.

DISCUSSION

Defendant contends the trial court lacked jurisdiction to revoke probation in October 2011 and execute the suspended sentence because his five-year term of probation began on September 15, 2005, and ended on September 14, 2010. Defendant argues the summary revocation of probation in January 2006 was unlawful since it was based on defendant's failure to report to probation, which was due to defendant's involuntary deportation and not to defendant's *willful* failure to report. Defendant further argues the court was without authority to rely on his conviction in the 2011 case as a basis for revocation because the offense occurred after September 14, 2010, the date on which he claims probation expired. Relying on *Tapia*, defendant argues the tolling provision in section 1203.2, subdivision (a), did not extend the probationary period or the court's authority to act, because there was no evidence of a willful violation having occurred *before* expiration of the original five-year term. Defendant contends the revocation of probation and execution of the suspended sentence in 2011 was therefore in excess of the court's jurisdiction, the prison sentence must be vacated, and his immediate release ordered. We disagree.

In construing a statute, our role is to ascertain legislative intent "so as to effectuate the purpose of the law." (*People v. Lopez* (2003) 31 Cal.4th 1051, 1056.) We look first to the words of the statute, giving them their usual and ordinary meaning, "because they are the most reliable indicator of legislative intent." (*Ibid*; accord, *People v. Lawrence* (2000) 24 Cal.4th 219, 230-231 (*Lawrence*)). "When the language of a statute is 'clear and unambiguous' and thus not reasonably susceptible of more than one meaning, ' ' " "there is no need for construction, and *courts should not indulge in it.*" ' ' ' ' [Citations.]" (*People v. Gardeley* (1996) 14 Cal.4th 605, 621, italics added.) Where

there is no ambiguity, “ “ “the Legislature is presumed to have meant what it said, and the plain meaning of the statute governs.’ ” ’ ” (Lawrence, *supra*, at p. 231.)

So, we begin with the words of the tolling provision in section 1203.2: “The revocation, summary or otherwise, shall serve to toll the running of the probationary period.” (§ 1203.2, subd. (a).) This clear and unambiguous language provides that an order of revocation, “summary or otherwise,” stops the running of time in the period of probation. The word “toll” as used in statutes means “[o]f a time period, esp. a statutory one) *to stop the running of; to abate . . .*” (Black’s Law Dict. (9th ed. 2009) p. 1625, col. 1, italics added.) The tolling provision also uses the mandatory word “shall,” leaving no ambiguity that both an order summarily revoking probation with the issuance of a bench warrant for the arrest of the probationer, as well as an order revoking probation and imposing judgment following a formal revocation hearing immediately suspend the running of the probationary period. The tolling provision has already been so interpreted. (See *People v. DePaul* (1982) 137 Cal.App.3d 409, 413-414 (*DePaul*) [“If the probationary period is tolled by revocation then the interval between an order of revocation and an order reinstating probation should not count in calculating the expiration date of the probationary period.”].)

This construction of the tolling provision is faithful to the purpose of the statutory scheme regarding probation. A grant of probation is intended to afford a defendant “an opportunity to demonstrate *over the prescribed probationary term* that his or her conduct has reformed to the degree that punishment for the offense may be mitigated or waived.” (*People v. Feyrer* (2010) 48 Cal.4th 426, 439, italics added.) Accordingly, a probationer is required to comply with the terms of probation during the probationary period. (*People v. Lewis* (1992) 7 Cal.App.4th 1949, 1952-1956 (*Lewis*); see also § 1202.7.) A construction of the tolling provision that would reward with a discharge a probationer who has evaded supervised compliance during his or her full probationary term in the same manner as a probationer who has fairly complied with all probationary terms and conditions is not reasonable. (*Cf. People v. Galvan* (2007) 155 Cal.App.4th 978 [defendant did not willfully violate probation where he was deported immediately upon

release from county jail and no evidence demonstrated he re-entered United States more than 24 hours before he was rearrested].)

The trial court's summary revocation of defendant's probation in January 2006 suspended the running of defendant's probationary period until such future date on which, depending upon the circumstances, the court in its discretion either reinstated probation, executed sentence, or discharged defendant from probation. Thus, defendant's probationary period had not expired in October 2011 when defendant was rearrested and brought back before the court to respond to the new assault charges and the violation of probation. When the court summarily revoked probation, there were over four and a half years left on defendant's probationary period, and the court had the power, if it had decided to do so, to reinstate defendant on probation for four and a half more years. Following the summary revocation, defendant remained subject to the terms and conditions of his probation. (See *Lewis, supra*, 7 Cal.App.4th at pp. 1954-1955 [probationer is "not free" from probationary restrictions until the probation period has terminated or he or she has been discharged].) The court was well within its authority to conduct a formal revocation hearing, find defendant in violation of his probationary terms, and execute the suspended sentence.

To defeat this result, defendant relies on *Tapia* and its interpretation of section 1203.2, subdivision (a), to mean that a revocation of probation only *temporarily* tolls the probationary period to allow the court to determine if a violation occurred before the expiration of the original probationary term. *Tapia* held that the tolling provision "suspends the running of the probationary period and permits extension of the term of probation if, and only if, probation is reinstated based upon a violation that occurred during the unextended period of probation." (*Tapia, supra*, 91 Cal.App.4th at p. 741.) Relying on *Tapia*'s narrow interpretation of the tolling provision, defendant argues his probationary term expired before the 2011 case was filed because he did not willfully violate probation as he was deported and incapable of reporting. There is no evidence in the record demonstrating whether defendant was immediately transferred to immigration authorities upon his release from county jail, or whether he was free of custody for some

days or weeks during which time he could have reported to the probation department. There is also no evidence indicating that defendant was incapable of reporting to probation from Guatemala by postal service or telephone, or of reporting in person after he returned to the United States, nor is there evidence he could not have used such means to pay the court-ordered fines and restitution.

If the Legislature intended to limit the tolling mandated by section 1203.2, subdivision (a) so that tolling ended upon expiration of the original probationary period unless a finding was made that a willful violation occurred before then, it could have said so. The tolling provision plainly states that a revocation of probation, summary or otherwise, tolls the running of the probationary period. The “ ‘ ‘ ‘plain meaning of the statute [therefore] governs’ ” ’ ’ ’ (Lawrence, *supra*, 24 Cal.4th at p. 231), and we decline to rewrite the statute.

DISPOSITION

The judgment is affirmed.

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GRIMES, J.

WE CONCUR:

RUBIN, ACTING P. J.

FLIER, J.