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THE PEOPLE OF THE STATE OF CALIFORNIA

6
7 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF LOS ANGELES

9 THE PEOPLE OF THE STATE OF CALIFORNIA,) Case No.: 3MT10967

10 Plaintiff,

11
12 vs.

13
14 MAYTE MICHELLE RODRIGUEZ,

15 Defendant.

DUPLICATE
ORIGINAL FILED
LOS ANGELES SUPERIOR COURT

SEP 27 2007

LOS ANGELES JUDICIAL DIST
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THE PEOPLE'S MOTION TO
TERMINATE PROBATIONS OR TO
MODIFY THIS COURT'S ORDERS
SUSPENDING IMPOSITION OF
SENTENCE; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF

PROBATION REVOCATION HEARING:
Judge: Hon. Daviann L. Mitchell
Department: 74
Date: September 28, 2007
Time: 1:30 p.m.

19 TO THE HONORABLE DAVIANN L. MITHCELL, JUDGE OF THE SUPERIOR COURT OF
20 THE STATE OF CALIFORNIA, COUNTY OF LOS ANGELES, DEPARTMENT 74, AND TO
21 DEFENDANT MAYTE MICHELLE RODRIGUEZ AND HER COUNSEL:

22 Please take notice that on September 28, 2007, at 1:30 p.m., or as soon thereafter as the matter
23 may be heard, in Department 74 of the Metropolitan Courthouse, located at 1945 South Hill Street, Los
24 Angeles, California 90007, the People of the State of California will move this court to terminate
25 probations or to modify its orders suspending imposition of sentence of Defendant Mayte Michelle
26 Rodriguez.

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I INTRODUCTION

In an amended complaint, consolidating the allegations set forth in Case Number 3MT10970 into Case Number 3MT10967 and its allegations, Defendant Mayte Michelle Rodriguez ("Ms. Rodriguez") was charged by the People of the State of California ("the People") with eight counts: (1) a misdemeanor violation of California Vehicle Code § 20002(a) – commonly referred to as Hit And Run; (2) a misdemeanor violation of Cal. Veh. Code § 14601.1(a) – commonly referred to as Driving with a Suspended or Revoked Privilege to Drive; (3) a misdemeanor violation of Cal. Veh. Code § 12500(a) – commonly referred to as Driving Without a Valid License; (4) an infraction violation of Cal. Veh. Code § 16025(a) – commonly referred to as Failure to Exchange Information at an Accident Scene; (5) a misdemeanor violation of Cal. Veh. Code § 23152(a) – commonly referred to as Driving Under the Influence; (6) a misdemeanor violation of Cal. Veh. Code § 23152(b) – commonly referred to as Driving with a Blood Alcohol Content of .08% or Greater; (7) a misdemeanor violation of Cal. Veh. Code § 14601.1(a) – commonly referred to as Driving with a Suspended or Revoked Privilege to Drive; and (8) a misdemeanor violation of Cal. Veh. Code § 12500(a) – commonly referred to as Driving Without a Valid License.

On June 4, 2004, Ms. Rodriguez plead no contest to Count 1 – Hit And Run, Count 2 – Driving with a Suspended or Revoked Privilege to Drive, and Count 6 – Driving with a Blood Alcohol Content of .08% or Greater. On the basis of those pleas, the court found Ms. Rodriguez guilty on those counts and convicted her thereof. The court suspended the imposition of sentence on all three counts and placed Ms. Rodriguez on summary probation on all three counts for a period of thirty-six (36) months under specified terms and conditions.

On January 24, 2006, the court revoked her probations. On May 3, 2006, Ms. Rodriguez (through counsel) admitted that she was in violation of her probations. On May 22, 2006, Ms. Rodriguez and her counsel stipulated that she was in violation of her probations. Based upon that admission and stipulation, the court found Ms. Rodriguez in violation of her probations and reinstated them on the same terms and conditions with the following modifications relevant to the probation violation hearing now pending before this court: (1) Serve sixty (60) days in the Los Angeles County

1 Jail; (2) Perform thirty (30) days of community service; (3) Perform thirty (30) days of CalTrans, which
2 was stayed pending successful completion of an alcohol monitoring program; (4) Re-Advisement of her
3 probationary obligation to obey all laws and orders of the court.

4 On December 7, 2006, a document was filed with this court purporting to demonstrate that Ms.
5 Rodriguez had completed sixteen (16) days of her thirty (30) day community service obligation. In
6 particular, that document purports to demonstrate that Ms. Rodriguez performed community service on
7 September 25, 2006. On March 9, 2007, this court again revoked her probations. On March 16, 2007, a
8 document was filed with this court purporting to demonstrate that Ms. Rodriguez had completed thirty
9 (30) days of her thirty (30) day community service obligation, thereby purporting to have completed her
10 obligated community service term and condition of her probation. Again, in particular, that document
11 purports to demonstrate that Ms. Rodriguez performed community service on September 25, 2006. On
12 August 17, 2007, Ms. Rodriguez (through counsel) admitted that she was in violation of her probations
13 as to her alcohol monitoring program and stipulated that she was in New York City on September 25,
14 2006 for the full twenty-four (24) hours. Based upon those admissions, this court lifted the stay, which
15 was previously imposed on May 22, 2006, on the obligation to perform thirty (30) days of CalTrans. On
16 motion of the People, her probations remained revoked and Ms. Rodriguez was ordered to be present for
17 this probation violation hearing, which was set for September 28, 2007.

18 Pursuant to Cal. Veh. Code § 42002, "[u]nless a different penalty is expressly provided by this
19 code, every person convicted of a misdemeanor for a violation of any of the provisions of this code shall
20 be punished by a fine of not exceeding one thousand dollars (\$1,000) or by imprisonment in the county
21 jail for not exceeding six months, or by both such fine and imprisonment." As to her probation on
22 Count 1, Ms. Rodriguez has paid a fine of three hundred dollars (\$300) and been ordered to serve sixty
23 (60) days in the county jail, but only been imprisoned in the county jail for one day. As to her probation
24 on Count 2, Ms. Rodriguez has paid a fine of three hundred dollars (\$300). As to her probation on
25 Count 6, which was extended to a total of sixty (60) months on May 22, 2006, Ms. Rodriguez has paid a
26 fine of three hundred ninety dollars (\$390) and been ordered to serve and imprisoned for forty-eight (48)

1 hours in the county jail.¹ Therefore, as to Count 1, Ms. Rodriguez may be ordered to pay an additional
2 fine of seven hundred dollars (\$700) and may be imprisoned in the county jail for one hundred seventy-
3 nine (179) days. As to Count 2, Ms. Rodriguez may be ordered to pay an additional fine of seven
4 hundred dollars (\$700) and may be imprisoned in the county jail for one hundred eighty (180) days. As
5 to Count 6, Ms. Rodriguez may be ordered to pay an additional fine of six hundred ten dollars (\$610)
6 and may be imprisoned in the county jail for a minimum of one hundred eighteen (118) days and
7 arguably one hundred seventy-eight (178) days. In all, Ms. Rodriguez may be imprisoned for a
8 minimum of four hundred seventy-seven (477) days and arguably five hundred thirty-seven (537) days
9 in the county jail and may be punished by fines totaling \$2010. Upon reinstatement on probation, if any,
10 Ms. Rodriguez will have seven (7) months remaining on probation as to Counts 1 and 2, and thirty-one
11 (31) more months remaining as to Count 6.

12 Based upon this Memorandum of Points And Authorities and any evidence, whether previously
13 filed with this court, previously stipulated to, or presented at hearing, and any additional arguments and
14 law presented at such hearing, the People move this court to find Ms. Rodriguez in violation of the terms
15 and conditions of her three probations and consequently to terminate probations or to modify its three
16 orders suspending the imposition of sentence in this case.

17 18 II

19 **BASED UPON STATUTORY AND JUDICIAL AUTHORITY REGARDING PROBATION,**
20 **THIS COURT SHOULD FIND MS. RODRIGUEZ IN VIOLATION OF THE TERMS AND**
21 **CONDITIONS OF HER THREE PROBATIONS AND TERMINATE PROBATIONS OR**
22 **MODIFY ITS ORDERS SUSPENDING THE IMPOSITION OF SENTENCE.**

23 The following legal authority, both statutory law and judicial precedent, should guide this court
24 to find Ms. Rodriguez in violation of the terms and conditions of her probations and to punish her

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27 ¹ Punishment for Driving With a Blood Alcohol Content of .08% Or Greater, under the circumstances of
28 Ms. Rodriguez's conviction in Count 6, is punishable pursuant to Cal. Veh. Code § 23536 or § 23538.
The maximum punishments as to fine and imprisonment imposable under those sections are the same as
those in Cal. Veh. Code § 42002.

1 accordingly. Pursuant to California Penal Code § 1203.1(a), "[t]he court, or judge thereof, in the order
2 granting probation, may suspend the imposing or the execution of the sentence and may direct that the
3 suspension may continue for a period of time not exceeding the maximum possible term of the sentence,
4 except as hereinafter set forth, and upon those terms and conditions as it shall determine. The court, or
5 judge thereof, in the order granting probation and as a condition thereof, may imprison the defendant in
6 a county jail for a period not exceeding the maximum time fixed by law in the case."² According to Cal.
7 Pen. Code § 1203.1(j), "[t]he court may impose and require any or all of the above-mentioned terms of
8 imprisonment, fine, and conditions, and other reasonable conditions, as it may determine are fitting and
9 proper to the end that justice may be done, that amends may be made to society for the breach of the
10 law, for any injury done to any person resulting from that breach, and generally and specifically for the
11 reformation and rehabilitation of the probationer, and that should the probationer violate any of the
12 terms or conditions imposed by the court in the matter, it shall have authority to modify and change any
13 and all the terms and conditions and to reimprison the probationer in the county jail within the
14 limitations of the penalty of the public offense involved."

15 Whereas Cal. Pen. Code § 1203.1 concerns the modification of the terms and conditions of
16 probation, Cal. Pen. Code § 1203.2 authorizes termination of probation. Cal. Pen. Code § 1203.2(a)
17 provides that "the court may revoke and terminate such probation if the interests of justice so require
18 and the court, in its judgment, has reason to believe from the report of the probation officer or otherwise
19 that the person has violated any of the conditions of his or her probation, has become abandoned to
20 improper associates or a vicious life, or has subsequently committed other offenses, regardless of
21 whether he or she has been prosecuted for such offenses."³ Cal. Pen. Code § 1203.2(c), "[u]pon any
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23
24 ² The justification for the length of the suspensions of the imposition of sentence in this case is
25 thereafter set forth in Cal. Pen. Code § 1203.1(a), which states "[h]owever, where the maximum
26 possible term of the sentence is five years or less, then the period of suspension of imposition or
27 execution of sentence may, in the discretion of the court, continue for not over five years."

28 ³ The California Court of Appeal has explained that "[t]he purpose of subdivision (a) [of Cal. Pen. Code
§ 1203.2] is to obtain the presence of probationer[.]" *In re Thomas* (1972) 27 Cal.App.3d 31, 34.
Furthermore, the *Thomas* court explained that "[a]s long as [the probationer] is present the purpose of
subdivision (a) is accomplished and that subdivision can apply." *In re Thomas*, 27 Cal.App.3d at 34.
As a basis for that conclusion, the *Thomas* court reasoned that any other interpretation "would exalt

1 revocation and termination of probation the court may, if the sentence has been suspended, pronounce
2 judgment for any time within the longest period for which the person might have been sentenced. . . .
3 [T]he person shall be delivered over to the proper officer to serve his or her sentence, less any credits
4 herein provided for.”

5 This court should exercise that aforementioned authority vested in it by the Legislature pursuant
6 to the following judicial guidance regarding probation. “Probation is a privilege and not a right.
7 [Citation].” *People v. Jungers* (2005) 127 Cal.App.4th 698, 703. As the California Supreme Court has
8 pronounced, the “[g]rant of probation is, of course, qualitatively different from such traditional forms of
9 punishment as fines or imprisonment. Probation is neither ‘punishment’ [citation] nor a criminal
10 ‘judgment.’ [Citation]. Instead, courts deem probation an act of clemency in lieu of punishment
11 [citation], and its primary purpose is rehabilitative in nature. [Citation].” *People v. Howard* (1997) 16
12 Cal.4th 1081, 1092. “In placing a criminal on probation, an act of clemency and grace [citation], the
13 state takes a risk that the probationer may commit additional antisocial acts. Where probation fails as a
14 rehabilitative device, as evidenced by the probationer’s failure to abide by the probation conditions, the
15 state has a great interest in being able to imprison the probationer without the burden of a new adversary
16 criminal trial. [Citation].” *People v. Rodriguez* (1990) 51 Cal.3d 437, 445. “[D]uring the probationary
17 period, the court retains jurisdiction over the defendant [citations], and at any time during that period the
18 court may, subject to statutory restrictions, modify the order suspending imposition or execution of
19 sentence. [Citation].” *Howard*, 16 Cal.4th at 1092.

20 The California Supreme Court has held that “the facts supporting revocation of probation may be
21 proven by a preponderance of the evidence.” *Rodriguez*, 51 Cal.3d at 439, 447. In fact, “probation may
22 be revoked despite the fact that the evidence of the probationer’s guilt may be insufficient to convict him
23 of the new offense.” *Rodriguez*, 51 Cal.3d at 442 [citation and internal quotation marks omitted].
24 Indeed, as that court has explained, “evidence that a probationer has committed another criminal offense

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26 form over substance.” *In re Thomas*, 27 Cal.App.3d at 34. Therefore, Cal. Pen. Code § 1203.2(a) is
27 applicable despite the fact that Ms. Rodriguez was ordered to appear before this court instead of being
28 brought before this court under arrest. Otherwise, form would be exalted over substance.

1 during the period of his probation is admissible at a revocation hearing despite the probationer's having
2 been acquitted of the criminal charge at trial. [Citation]." *Rodriguez*, 51 Cal.3d at 443.

3 The evidence in this case establishes by well more than a preponderance of the evidence that Ms.
4 Rodriguez has violated the community service term and condition of her probations. Based upon that
5 evidence, this court should find Ms. Rodriguez in violation of her probations and punish and/or
6 rehabilitate her further accordingly.

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8 **III**

9 **MS. RODRIGUEZ VIOLATED HER PROBATIONS BY FAILING TO COMPLETE THE**
10 **COMMUNITY SERVICE TERM OR CONDITION OF HER PROBATIONS AS ORDERED BY**
11 **THIS COURT.**

12 This court should find that Ms. Rodriguez failed to complete her probationary obligation to
13 perform thirty (30) days of community service as ordered by this court. A document was filed with this
14 court on March 16, 2007 purporting to prove that she completed that probationary obligation of
15 community service. In particular, that document purports to demonstrate that Ms. Rodriguez performed
16 community service on September 25, 2006 as one of the thirty (30) days offered as proof of such
17 obligation. The purported signatures of Ms. Rodriguez and her purported supervisor are present on the
18 line of that document dated "09-25-06." However, and in spite of those signatures for that date, on
19 August 17, 2007, Ms. Rodriguez stipulated that she was in New York City on September 25, 2006 for
20 the full twenty-four (24) hours.⁴ Therefore, at a minimum, Ms. Rodriguez failed to do community
21 service on September 25, 2006 by any evidentiary standard, but at least by a preponderance of the
22 evidence. Accordingly, Ms. Rodriguez failed to complete her probationary obligation to perform thirty
23 (30) days of community service as ordered by this court. Based on this evidence alone, this court
24 consequently should find Ms. Rodriguez in violation of her probations. Additionally, the fact that one

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26 ⁴Knowingly procuring or offering a false work referral form, purportedly completed and indicating a
27 defendant's completed hours of community service, has been held to constitute a violation of Cal. Pen.
28 Code § 115(a). See *People v. Tate* (1997) 55 Cal.App.4th 663, 664-65.

1 material item of that document is materially false calls the remaining items of that document into
2 question as to their accuracy regarding completion of community service.⁵

4 IV

5 SENTENCING ARGUMENT AND CONCLUSION

6 A document was filed in this court purporting to demonstrate that Ms. Rodriguez completed the
7 community service term of her probations. Based upon a stipulation by Ms. Rodriguez, she was in New
8 York for the entirety of September 25, 2006 in contradiction of that filed community service document.
9 At a minimum, such evidence demonstrates that Ms. Rodriguez failed to complete the community
10 service term and condition of her probations.

11 If a probationer admits that one is in violation of his or her probation, that probationer is entitled
12 to rewarding consideration at sentencing for acceptance of responsibility. If, however, a probationer
13 fails to admit that one is in violation of his or her probation and thereby fails to accept responsibility for
14

15 ⁵The questionability of that community service document, regarding its accuracy, is bolstered by
16 competent, admissible evidence that the hours in which Ms. Rodriguez purportedly performed
17 community service do not comport with the hours of the shifts worked by the supervisors who signed off
18 on such service. The most notable instance, beside the aforementioned one for September 25, 2006, is
19 February 19, 2007. The community service document purports to show that Ms. Rodriguez performed
20 community service at 1300 hours to presumably 2100 hours. However, the two supervisors whose
21 signatures appear on the document as the Supervisor's Signature for each date were not on shift during
22 that time period. Supervisor Norris, whose signature appears on that date line, had the shift from 0500
23 hours to 1300 hours. Supervisor Swensson, the other supervisor whose signature appears on the
24 document but not for this date, was not on shift on February 19, 2007.

25 In addition to February 19, 2007, there are at least six (6), and possibly nine (9), other instances wherein
26 the times listed for Ms. Rodriguez's performance of community service do not coincide with the shifts
27 of the signing supervisor.

- 28 (1) October 18, 2006 at 2100, Supervisor Swensson was on shift only from 2100 hours to 0300 hours.
- (2) January 14, 2007 at 0700, Supervisor Norris was on shift only from 0500 to 1300 and then in the field from 1300 to 2100.
- (3) January 15, 2007 at 2300, Supervisor Swensson was on shift only from 2100 to 0500.
- (4) January 16, 2007 at 2200, Supervisor Swensson was on shift only from 0500 to 1300 and then in the field from 1300 to 2100.
- (5) January 28, 2007 at 1200, Supervisor Norris was on shift from 0500 to 1300 and then in the field from 1300 to 2100.
- (6) January 29, 2007 at 2400, Supervisor Norris was on shift from 0500 to 1300.

1 one's actions, then that probationer is not entitled to any such consideration or reward at sentencing. A
2 probationer does have a right to a hearing to determine whether one is in violation of probation;
3 however, one who fails to accept responsibility and fails to admit that one is in violation should not be
4 treated the same as all those other probationers who do accept responsibility and who do admit that one
5 is in violation of probation. Given that the primary purpose of probation is rehabilitative in nature, one
6 who violates probation and fails to admit such violation demonstrates much less rehabilitation than one
7 who does not violate probation and less rehabilitation than one who does violate probation but admits
8 such violation. One who violates probation and fails to admit such violation abuses the privilege of
9 probation twice. When one repeatedly fails to abide by the terms and conditions of probation, and then
10 fails to accept responsibility and fails to admit that one is in violation of probation, probation has failed
11 as a rehabilitative device and the People of this state have a great interest in being able to imprison that
12 person without the burden of a new adversary criminal trial.

13 If Ms. Rodriguez fails to accept responsibility for her actions and fails to admit that she is in
14 violation of her probations, then the People move this court to terminate all three probations and impose
15 sentences on each count to the maximum extent allowable. If, however, Ms. Rodriguez accepts
16 responsibility for her actions and admits that she is in violation of her probations, then the People move
17 this court to impose the following additional terms and conditions at a minimum upon reinstatement: (1)
18 Substantial jail time on both counts (Count 1 and Count 2) with only seven months of probation
19 remaining before expiration. Ms. Rodriguez should be required to serve such jail time only in the
20 county jail without any early release for any reason, with any appropriate order to the jail as necessary;
21 (2) A requirement that Ms. Rodriguez perform a complete and verifiable thirty (30) days of Community

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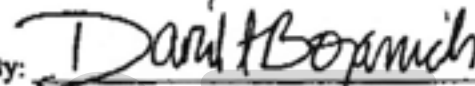
1 Service through the Volunteer Center; (3) Other terms and conditions necessary to effectuate the terms
2 and conditions of her probations.

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5 DATE: September 27, 2007

6 Respectfully submitted,

7 ROCKARD J. DELGADILLO, City Attorney
8 ELLEN A. SARMIENTO,
9 Supervising Assistant City Attorney
10 DAVID A. BOZANICH, Deputy City Attorney

11 By:


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