

People v. Smolkin

Decided Jun 21, 2017

A149514

06-21-2017

THE PEOPLE, Plaintiff and Respondent, v.
ANATOLY SMOLKIN, Defendant and Appellant.

BRUNIERS, J.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

[California Rules of Court, rule 8.1115\(a\)](#), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by [rule 8.1115\(b\)](#). This opinion has not been certified for publication or ordered published for purposes of [rule 8.1115](#). (Solano County Super. Ct. No. FCR323474)

Anatoly Smolkin was convicted by a San Francisco jury of multiple counts of stalking ([Pen. Code, § 646.9, subd. \(a\)](#))¹ against 11 different victims; multiple violations of restraining orders ([§ 646.9, subd. \(b\)](#)); making criminal threats ([§ 422](#)) against nine different victims; making threats to an executive officer ([§ 69](#)); battery on a peace officer ([§ 243, subd. \(b\)](#)); disruptive presence at a school ([§ 626.8, subd. \(a\)](#)); and 15 counts of contempt of court by violating a civil harassment restraining order ([§ 166, subd. \(a\)\(4\)](#)).² The case apparently involved Smolkin calling, e-mailing and threatening 23 individuals over a two-month period after he was terminated by his employer. In April 2013, the trial court sentenced Smolkin to a total determinate term of seven years in state prison. The court imposed a 10-year criminal protective order prohibiting Smolkin from

entering the City of San Francisco and ordering him to stay 150 yards away from the Tishman Speyer Building at One Bush Street in San Francisco. No appeal was taken. *2

¹ Undesignated statutory references are to the Penal Code.

² *People v. Smolkin* (Super. Ct. S.F. City and County, 2013, No. 218844) (case No. 12001175).

Smolkin was released on parole to Solano County on March 30, 2016. On April 6, 2016, Smolkin received and acknowledged both general and special conditions of parole. One special condition of parole was that he not enter the City of San Francisco "based on previous offenses as noted in the subject's criminal history." The general conditions advised Smolkin that if he violated any conditions of parole "or violate[d] any law" he would be subject to arrest and incarceration "regardless of whether new charges are filed."

On August 15, 2016, a petition for revocation of Smolkin's parole was filed in the Solano County Superior Court alleging violations of parole by (1) failure to stay away from the City of San Francisco; (2) attempting to contact victims at the Tishman Speyer Building at One Bush Street in San Francisco; and (3) making criminal threats to parole agents following his arrest. An evidentiary hearing was held on September 16, 2016. The court found Smolkin in violation of his parole conditions, reinstating parole on the same terms and conditions as previously ordered, conditioned on service of a term of 180 days in county jail.³

3 A parole revocation order is a postjudgment order affecting the substantial rights of the party, and is therefore appealable. (§ 1237, subd. (b).)

Assigned counsel submitted a *Wende*⁴ brief, certifying an inability to identify any issues for appellate review. Counsel also submitted a declaration confirming Smolkin was advised of his right to personally file a supplemental brief raising any points which he wishes to call to the court's attention. No supplemental brief has been submitted. As required, we have independently reviewed the record. (*People v. Kelly* (2006) 40 Cal.4th 106, 109-110.) We find no arguable issues and therefore affirm.

⁴ *People v. Wende* (1979) 25 Cal.3d 436.

DISCUSSION

"[R]evocation of parole is not part of a criminal prosecution and thus the full panoply of rights due a defendant in such a proceeding does not apply to parole revocations. [Citation] . . . Revocation deprives an individual, not of the absolute liberty to which every citizen is entitled, but only of the conditional liberty properly dependent *3 on observance of special parole restrictions." (*Morrissey v. Brewer* (1972) 408 U.S. 471, 480.)

"If the court finds the parolee has violated the conditions of parole, it may (1) return the person to parole supervision with modifications of conditions, if appropriate, (2) revoke parole and order the person to confinement in county jail, or (3) refer the person to reentry court or an evidence-based program." (*Williams v. Superior Court* (2014) 230 Cal.App.4th 636, 652; see § 3000.08, subd. (f).) Whether to revoke parole lies within the trial court's "very broad discretion." (*People v. Rodriguez* (1990) 51 Cal.3d 437, 443.) The facts supporting revocation must be proved by a preponderance of the evidence. (*Id.* at p. 441; see § 3044, subd. (a)(5).) We review the order revoking parole for abuse of discretion (*People v. Butcher* (2016) 247 Cal.App.4th 310, 318), but the

court's factual findings for substantial evidence (*People v. Urke* (2011) 197 Cal.App.4th 766, 773).

The court found, by a preponderance of the evidence, that Smolkin violated his parole by being in the City of San Francisco, and failing to obey all laws by making criminal threats (§ 422) to the parole agent. In the trial court, Smolkin objected that the condition prohibiting him from entering the City of San Francisco was overbroad and vague. We find no arguable issue that we need address.⁵ A parole agent who took Smolkin into custody testified that Smolkin said he "would have all of us killed," that he would kill the agent's wife and children, and that he would have the parole office "blown up at 5 o'clock a.m. the next day."

4 The agent testified that, based on Smolkin's *4 comments, he was in fear for himself and for his family. That evidence alone was sufficient to establish a violation of the terms of Smolkin's parole.⁶

⁵ Smolkin, in any event, fails to provide a record adequate to assess the validity of this condition. The constitutionality of a parole condition is a fact specific inquiry. A special condition of parole will be upheld if it has a rational basis and is reasonably related to the nature of the offense and the history and characteristics of the offender. (See *United States v. T.M.* (9th Cir.2003) 330 F.3d 1235, 1240; *In re Stevens* (2004) 119 Cal.App.4th 1228, 1234 ["[c]onditions of parole must be reasonably related to the compelling state interest of fostering a law-abiding lifestyle in the parolee"].)

⁶ A building security guard personally familiar with Smolkin testified that he observed Smolkin enter the lobby of the Tishman Speyer Building on August 6, 2016. The court relied on that testimony to find that Smolkin had improperly entered the City of San Francisco. That testimony also established a violation of a criminal

protective order previously entered in the underlying criminal proceeding, as alleged in the revocation petition. -----

Smolkin was represented throughout the revocation proceedings by competent counsel. No arguable issues are presented.

DISPOSITION

5 The judgment is affirmed. *5

/s/_____

BRUINIERS, J. WE CONCUR: /s/_____

JONES, P. J. /s/_____

SIMONS, J.
