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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.

WENDY MARTIN,

Defendant and Appellant.

A104038

(Napa County
Super. Ct. No. CR100614)

I. INTRODUCTION

Pursuant to a plea agreement entered into in 2000, appellant pled guilty to the one count in a complaint charging her with possession of a controlled substance in violation of Health and Safety Code section 11377, subdivision (a). Also pursuant to the same plea agreement, she was referred to drug court from which she “graduated.” According to the plea agreement, once that happened, the case against her was to be dismissed. Nevertheless, thereafter, the court purported to revoke her probation in this case and, later, sentenced her to the mitigated term of 16 months in prison for repeated, and admitted, violations of probation.

The Attorney General and, according to his brief to this court, now the Napa County District Attorney, agree that the court erred in further sentencing appellant in this case and that, pursuant to the express terms of the plea agreement, the case should have been dismissed. We agree.

II. FACTUAL AND PROCEDURAL BACKGROUND

Because the parties do not disagree regarding either the facts, the applicable law, or the appropriate disposition of this case, our recitation of the background will be brief.

Appellant was on probation on a prior case (No. CR38302) when, on March 3, 2000, she was arrested when, during a probation search, an officer found her in possession of a small plastic bag containing methamphetamine. A few days later, she was charged with one count of a violation of Health and Safety Code section 11377, subdivision (a), to which, pursuant to a plea agreement, she pled guilty and also admitted the violation of probation in the earlier case.

The plea agreement read as follows: “[R]eferral to drug court. If completes, cases dismissed.” According to a later court minute order, appellant did in fact graduate from drug court; the present case was thus removed from the drug court calendar.

Nonetheless, the case was not formally dismissed. Indeed, appellant was charged with violating probation in it and admitted doing so. The court granted her further probation in both this and the earlier case, on condition that she attend a Proposition 36 program. But she apparently did not do so, or do so regularly enough, with the result that the probation department filed two subsequent petitions to revoke probation. Appellant admitted these violations, too and was re-referred to the same program.

After a fourth alleged (and admitted) violation of probation, the court re-referred appellant to the drug court, but she failed to appear at least twice there. At her request, the court removed her from drug court. On September 9, 2003, it sentenced her to the mitigated term of 16 months in state prison. Appellant filed a notice of appeal the following day.¹

¹ Appellant’s notice of appeal purports to appeal *both* case No. CR100614 *and* the earlier case, case No. CR 109538. Appellant’s opening brief lists both cases on its cover, but its text appears to deal only with the former case; the Attorney General’s brief, and its concession regarding reversal, relates only to case No. CR100614, also. Thus, this opinion deals *only* with that case.

III. DISCUSSION

Practically no discussion is required regarding this case. The case law is clear that plea agreements must be enforced to effect “fulfillment of the bargain.” (*People v. Kaanehe* (1977) 19 Cal.3d 1, 13; see also *People v. Quartermain* (1997) 16 Cal.4th 600, 620; *People v. Walker* (1991) 54 Cal.3d 1013, 1024 & 1027, fn. 3; *People v. Mancheno* (1982) 32 Cal.3d 855, 860-861.)

IV. DISPOSITION

The judgment is reversed and the matter remanded to the superior court with directions to dismiss case No. CR100614.

Haerle, J.

We concur:

Kline, P.J.

Lambden, J.