

CERTIFIED FOR PUBLICATION

COPY

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Shasta)

THE PEOPLE,

Plaintiff and Respondent,

v.

BARRY ANSTEN HAZLE,

Defendant and Appellant.

C052041
(Super.Ct. No. 04F338)

**MODIFICATION OF OPINION;
No change in judgment**

APPEAL from a judgment of the Superior Court of Shasta County, James Ruggiero and William Gallagher, JJ. Reversed.

James H. Dippery, Jr., under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Mary Jo Graves, Chief Assistant Attorney General, Michael P. Farrell, Senior Assistant Attorney General, Angelo S. Edralin, Deputy Attorney General, for Plaintiff and Respondent.

THE COURT:

It is ordered that the opinion filed herein on November 29, 2007, be modified as follows:

1. On page 5 of the slip opinion, remove the underscoring to the language in the last three lines and delete the word "ante".

2. On page 9, the second full paragraph shall read as follows:

On the second violation, if "the state moves for a second time to revoke probation, the court shall conduct a hearing to determine whether probation shall be revoked. The trial court shall revoke probation if the alleged probation violation is proved and the state proves . . . either that the defendant poses a danger to the safety of others or is unamenable to drug treatment." (§ 1210.1, former subd. (e)(3)(B).)

3. On page 9, The third full paragraph shall read as follows:

On the third violation, if "the state moves for a third time to revoke probation, the court shall conduct a hearing to determine whether probation shall be revoked. If the alleged probation violation is proved, the defendant is not eligible for continued probation under subdivision (a)." (§ 1210.1, former subd. (e)(3)(C).) Although Judge Ruggiero found there was "no showing of non-amenability," he did not make the specific findings required to reimpose probation under this subdivision.

4. Remove the appendix in its entirety and replace it with the appendix affixed hereto.

This modification does not change the judgment.

FOR THE COURT:

SIMS _____, Acting P.J.

MORRISON _____, J.

ROBIE _____, J.

APPENDIX

Former portions of Penal Code Section 1210.1, as applicable in this case (Stats. 2001, ch. 721, § 3).

(e)(3)(A) If a defendant receives probation under subdivision (a), and violates that probation either by committing a nonviolent drug possession offense, or a misdemeanor for simple possession or use of drugs or drug paraphernalia, being present where drugs are used, or failure to register as a drug offender, or any activity similar to those listed in paragraph (1) of subdivision (d) of Section 1210, or by violating a drug-related condition of probation, and the state moves to revoke probation, the court shall conduct a hearing to determine whether probation shall be revoked. The trial court shall revoke probation if the alleged probation violation is proved and the state proves by a preponderance of the evidence that the defendant poses a danger to the safety of others. If the court does not revoke probation, it may intensify or alter the drug treatment plan.

(e)(3)(B) If a defendant receives probation under subdivision (a), and for the second time violates that probation either by committing a nonviolent drug possession offense, or a misdemeanor for simple possession or use of drugs or drug paraphernalia, being present where drugs are used, or failure to register as a drug offender, or any activity similar to those listed in paragraph (1) of subdivision (d) of Section 1210, or by violating a drug-related condition of probation, and the state moves for a second time to revoke probation, the court shall conduct a hearing to determine whether probation shall be revoked. The trial court shall revoke probation if the alleged probation violation is proved and the state proves by a preponderance of the evidence either that the defendant poses a danger to the safety of others or is unamenable to drug treatment. In determining whether a defendant is unamenable to drug treatment, the court may consider, to the extent relevant, whether the defendant (i) has committed a serious violation of rules at the drug treatment program, (ii) has repeatedly committed violations of program rules that inhibit the defendant's ability to function in the program, or (iii) has continually refused to participate in the program or asked to be removed from the program. If the court does not revoke probation, it may intensify or alter the drug treatment plan.

(e)(3)(C) If a defendant receives probation under subdivision (a), and for the third time violates that probation either by committing a nonviolent drug possession offense, or by violating a drug-related condition of probation, and the state moves for a third time to revoke probation, the court shall conduct a hearing to determine whether probation shall be revoked. If the alleged probation violation is proved, the defendant is not eligible for continued probation under subdivision (a).