Filed 3/30/22 P. v. Churchill CA1/4

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. DAVID HARLOW CHURCHILL, Defendant and Appellant.	A162078 (Mendocino County Super. Ct. No. SCTM-CRCR-19-33196)

The COVID-19 pandemic has required the modification of court operations throughout the United States and within California and has challenged the previously common understanding of what constitutes a "personal" appearance. Defendant David Harlow Churchill appeals the revocation of his probation and the execution of a previously suspended four-year prison sentence on the grounds that the trial court violated his due process rights when it permitted only his remote appearance via videoconference at his contested probation violation hearing and subsequent sentencing hearing. Churchill further asserts that because there was no opportunity for him to confidentially consult with his attorney at these proceedings, he was denied his right to counsel. Churchill argues that these constitutional violations, plus the lack of substantial evidence presented,

warrant reversal of the probation violation findings and vacation of the sentence.

While we agree that the trial court's failure to permit Churchill to attend his probation violation hearing in person was error, and the limited attorney-consultation opportunities are extremely disconcerting, in the narrow context of this probation violation hearing and subsequent sentencing, any error was harmless. Finding the probation revocation was supported by substantial evidence, we affirm.

I. BACKGROUND

A. COVID-19 and Emergency Rules 3 and 5

On March 4, 2020, California Governor Gavin Newsom declared a state of emergency due to the outbreak and spread of the novel coronavirus (COVID-19) in California.[1] On March 27, 2020, the Governor issued an executive order authorizing the Judicial Council of California (JCC) and its chairperson to manage operations within the judicial branch to mitigate the impact of COVID-19 and "remove any impediment that would otherwise prevent the Chairperson from authorizing, by emergency order or statewide rule, any court to take any action she deems necessary to maintain the safe and orderly operation of that court."[2] Pursuant to this authority, on April 6, 2020, the JCC and its chairperson adopted a series of emergency rules related to COVID-19 contained in Appendix I of the California Rules of

---

[1] <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf.>, as of March 30, 2022.

[2] <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.27.20-N-38-20.pdf>, as of March 30, 2022.

Court,[3] which addresses, among other things, the use of remote and telephonic hearings.

1. Emergency Rule 3

Emergency rule 3, subdivision (a)(2), authorizes remote criminal proceedings, providing in part: "In criminal proceedings, courts must receive the consent of the defendant to conduct the proceeding remotely and otherwise comply with emergency rule 5. Notwithstanding Penal Code sections 865 and 977 or any other law, the court may conduct any criminal proceeding remotely. As used in this rule, 'consent of the defendant' means that the consent of the defendant is required only for the waiver of the defendant's appearance as provided in emergency rule 5."

2. Emergency Rule 5

Emergency rule 5 permits personal presence waivers by defendants and provides at subdivision (e): "(1) With the defendant's consent, a defendant may appear remotely for any pretrial criminal proceeding. [¶] (2) Where a defendant appears remotely, counsel may not be required to be personally present with the defendant for any portion of the criminal proceeding provided that the audio and/or video conferencing system or other technology allows for private communication between the defendant and his or her counsel. Any private communication is confidential and privileged under Evidence Code section 952."

B. No Contest Plea

On March 10, 2020, Churchill entered a no contest plea to a felony violation of assault with a deadly weapon (Pen. Code,[4] § 245, subd. (a)(4)),

---

[3] All further references to the California Rules of Court will refer to the emergency rules unless otherwise specified.

[4] Further unspecified statutory citations are to the Penal Code.

with an agreement to suspend the execution of a four-year state prison sentence and instead be placed on three years of formal probation. As a condition of that probation, Churchill was to serve 180 days in county jail and comply with additional terms and conditions.

C. Probation Revocation Proceedings

The probation department filed two petitions alleging various probation violations. The first petition, filed on October 29, 2020, alleged five different violations: (1) reporting an incorrect address; (2) failing to appear at a scheduled probation appointment without explanation or attempt to reschedule; (3) failing to provide proof of the ordered mental health assessment; (4) failing to provide proof of enrollment in or completion of an approved residential drug and alcohol treatment program; and (5) failing to provide proof of enrollment in the referred anger management program. On November 23, 2020, probation filed an amended petition alleging five additional bases for violation: (6) travel to Vermont without permission; (7) commission of vehicle theft in Vermont; (8) failure to appear in court, resulting in the issuance of an arrest warrant; (9) commission of a violation of Health and Safety Code section 11351, possession of 771 morphine pills; and (10) the required issuance of a probation order of arrest resulting in Churchill's arrest.

1. Probation Violation Hearing

At a December 8, 2020 proceeding, Churchill asked to be present in person at his contested probation violation hearing. However, at the December 22, 2020 hearing, Churchill was not transported and instead appeared by video. Defense counsel objected to Churchill's physical absence and stated Churchill had not waived his right to be personally present. The court overruled the objection, stating: "[W]e are currently in a COVID-19

pandemic. We're at the highest stage of alert, purple tier, in this county. That's just one tier short of a complete shutdown. [¶] Transporting inmates to and from the county jail always poses a risk, not only to the inmate, but to transportation staff and to the people in the jail, oftentimes resulting in quarantining the [p]eople after they have come to the courthouse. [¶] This is on for a violation of probation hearing, and Mr. Churchill is being afforded not only the opportunity to see and hear all of the evidence against him, but to testify in his own defense if he chooses to. [¶] If he chooses to testify, [defense counsel], we can address those concerns at a later stage. Right now, I'm giving him all the due process protections that are required. [¶] He will see and hear all of the evidence. He will be able to see and hear anyone who testifies against him. So your objection is noted for the record."

The court then proceeded with the contested probation violation hearing. Deputy Probation Officer Mark Duran testified that Churchill failed to provide a correct home address, missed several appointments without contact, failed to conduct or provide a mental health assessment, failed to enroll in a residential drug program, and failed to enroll in an anger management program. Duran testified that Churchill failed to show proof of enrollment in a residential treatment program or in an anger management treatment program. Before filing the petition to revoke probation, Duran contacted the treatment center, and the staff corroborated that Churchill had not contacted them for a mental health assessment.

With respect to residential abuse treatment programs, Duran testified that he had "many applications there at the office" to provide to probationers. At every contact, Duran offers probationers assistance in completing applications. Anger management classes are offered by Santiago Simental, who has a sliding scale for costs. Simental is "lenient in allowing people to

begin the class." Churchill was mandated to complete a "minimal" 12 weeks of anger management programming.

Mendocino County Sheriff Deputy Brandon McGregor testified that he searched Churchill's person on November 14, 2020, and found 771 suspected morphine pills in unmarked medication bottles. Three or four were white; the rest were blue and marked "M15." Churchill did not have a prescription for morphine.[5] Deputy McGregor further testified that he had made "no less than five arrests for morphine" and was a deputy coroner, which required him to count and destroy morphine pills in multiple cases each year. In addition to the police academy training concerning controlled substances and their identification, Deputy McGregor had also taken "an 11500 class," and his field training included training in the identification of controlled substances, including morphine.

The trial court overruled a defense objection to Deputy McGregor's opinion testimony, as follows: "Deputy McGregor has testified that he has specific training in addition to the training he received in the police academy, specifically, five separate arrests involving morphine, other cases that involved . . . his capacity as a deputy coroner where morphine was destroyed. [¶] More recently, in the last two years he worked with a more experienced narcotics officer. [¶] And I will accept his testimony on whether or not he recognizes either by shape, color, stamped impression, or all three what was identified—what he's identified as 760 plus blue pills stamped M15."

Deputy McGregor further testified that, when asked, Churchill had stated he did not know if the pills were morphine; he had found them. Churchill did have a medical prescription for high blood pressure (and the

---

[5] No allegations were made and no testimony was offered suggesting that Churchill had possessed the morphine for sale.

officer located that medication) but not for morphine. Deputy McGregor testified that it is a violation of the Penal Code to possess morphine without a prescription.

Churchill did not testify or present any evidence in his defense. In closing argument, defense counsel argued that Churchill "may not have had the ability to comply with some of the technical . . . requirements . . . . [T]he People have proved that Mr. Churchill didn't do what he was told to do, but I don't think they have to prove a willful violation."

The court found Churchill in violation of his probation based on five of the 10 grounds alleged. The court declined to make findings concerning the Vermont incidents or failures to appear but did make four findings concerning Churchill's failure to enter and to complete a residential substance abuse treatment program, to submit to a mental health evaluation, make and keep an appointment with a substance abuse treatment program and to enroll in an anger management program. The court also found Churchill in violation for failing to obey all laws by possessing morphine without a prescription.

2. Sentencing Hearing

At the February 11, 2021 sentencing hearing, Churchill again appeared via video. Unlike at the probation hearing, defense counsel did not object to proceeding by video, and Churchill did not request to be present in the courtroom. But the court also did not expressly secure or verify an in-person appearance waiver.

After hearing extensive argument regarding Churchill's efforts (or lack thereof) at rehabilitation, the court reasoned: "I remember this sentencing back in April 6th of 2020. I really wanted you to be successful. I remember even lifting all the holds on your license, things that would help you get your

license. I referred you back to Lucky Deuce. I suspended all of the fines and fees so you could focus on your rehabilitation, and that was all an attempt for the Court to assist in any way it could. [¶] But Mr. Churchill, the responsibilities are yours and not probation's. Probation is there to assist you, there's no doubt about it, but the violations that you admitted to are failures to even show up to probation's appointments so they could help you. [¶] You admitted failing to report to the mental health evaluation at Hospitality Center and to even enroll in the Alternatives to Violence, and I know Mr. Simental who runs that program has a sliding scale and can help people who don't have money get into that program. But it was even something as simple as keeping in contact with probation so they knew where you were living and where you were staying, and you admitted that you didn't keep them advised of your address. [¶] So I'm going to impose—or deny probation and now lift the suspension on the execution of sentence."

The court then terminated Churchill's probation and ordered the execution of the suspended four-year state prison sentence.

3. Attorney-Client Communication

At both the probation violation and sentencing hearings, defense counsel asked to speak with Churchill confidentially. He was granted permission for a nonconfidential conversation at the probation violation hearing. He was denied permission for any confidential or off-record conversation with Churchill at the sentencing hearing.

II. DISCUSSION

A. Right to an In-person Appearance

Churchill argues, and the Attorney General agrees, that holding the probation violation hearing without Churchill's personal presence and over his objection was error in violation of emergency rules 3 and 5. At issue is

the appropriate standard of review. Churchill argues this error is a structural due process violation that requires automatic reversal, whereas the Attorney General argues that any error is harmless. We agree with the Attorney General.

1. Legal Principles

A defendant's right to be personally present at critical stages of criminal proceedings is well grounded. (See, e.g., *People v. Bradford* (1997) 15 Cal.4th 1229, 1236–1357; *Kentucky v. Stincer* (1987) 482 U.S. 730, 745; *People v. Perry* (2006) 38 Cal.4th 302, 311.) This right includes proceedings for the revocation of probation, which carry their own due process protections. (See, e.g., *People v. Vickers* (1972) 8 Cal.3d 451, 458; § 1203.2, subd. (b); *Gagnon v. Scarpelli* (1973) 411 U.S. 778, 782 [holding that probationers are entitled to preliminary and final revocation hearings under the conditions specified in *Morrissey v. Brewer* (1972) 408 U.S. 471].)

One such protection is the "opportunity to be heard in person and to present witnesses and documentary evidence." (*People v. Malabag* (1997) 51 Cal.App.4th 1419, 1422 [citing *Black v. Romano* (1985) 471 U.S. 606, 612].) This right to "be present" or to "personally appear" has been interpreted to mean the right to physically appear at a hearing. (*In re J.G.* (2008) 159 Cal.App.4th 1056, 1065 [interpreting the section 3041.5 right to "be present" at a parole hearing to require an appearance in person rather than by telephone].)

It is equally well settled that the constitutional and statutory right to be present at all critical stages includes sentencing. (*People v. Sanchez* (2016) 245 Cal.App.4th 1409, 1414, quoting *People v. Robertson* (1989) 48 Cal.3d 18, 60; Cal. Const., art. I, § 15; §§ 977, 1043.) However, "[a] defendant may waive [his] constitutional right to be present for sentencing

'as long as [his] waiver is voluntary, knowing and intelligent.' " (*People v. Nieves* (2021) 11 Cal.5th 404, 508.) A defendant may also waive his statutory right to be present. (§§ 977, subd. (b)(2), 1043, subd. (d).)

Where there is error, " '[d]efendant has the burden of demonstrating that his absence prejudiced his case or denied him a fair trial.' " (*People v. Blacksher* (2011) 52 Cal.4th 769, 799.) "Under the federal Constitution, error pertaining to a defendant's presence is evaluated under [*Chapman*'s] harmless-beyond-a-reasonable-doubt standard . . . ." (*People v. Davis* (2005) 36 Cal.4th 510, 532; accord, *People v. Mendoza* (2016) 62 Cal.4th 856, 902.) Where the error is merely statutory, it " ' "is reversible only if it is reasonably probable the result would have been more favorable to [the] defendant absent the error." ' " (*People v. Avila* (2006) 38 Cal.4th 491, 598, quoting *People v. Moon* (2005) 37 Cal.4th 1, 21; accord, *People v. Mendoza,* at p. 902–903; *People v. Davis* (2009) 46 Cal.4th 539, 611.)

2. Any Error Harmless

The record of the December 22, 2020, revocation hearing shows not only that Churchill failed to waive his right to be present in the courtroom, but also that he expressly objected to his remote appearance; thus, violations of both emergency rules 3 and 5 occurred. Absent a waiver, the trial court erred.

However, no court of review has interpreted the right to be physically present in the probation violation context—before or during the COVID-19 state of emergency—to constitute "structural error" requiring immediate reversal, as Churchill argues.[6] Instead, at least one appellate court appears

---

[6] Churchill's argument for structural error because of his exclusion "from the entirety of the proceedings" is not entirely accurate. Unlike the defendants in Churchill's cited cases, Churchill was not precluded from seeing, hearing, or otherwise participating in the revocation-related

to have applied a harmless error standard in a juvenile delinquency proceeding conducted via videoconference without securing the juvenile's consent. (*E.P. v. Superior Court* (2020) 59 Cal.App.5th 52, 54, 58–60.) At issue in *E.P.* was the trial court's temporary local rules, which limited juvenile court appearances to only remote unless the court found good cause for an in-person appearance. (*Id.* at p. 56.) Finding the local rules conflicted with Welfare and Institutions Code section 679, establishing a minor's right to be physically present in the courtroom absent a waiver, as well as the JCC's related emergency rules, the court granted the minor's writ of mandate. (*E.P.*, at pp. 54, 60–62.) The appellate court, however, did not expound upon the harmless error standard it applied. (See *E.P.,* at p. 61.)

Here, Churchill appeared at the probation violation hearing, albeit remotely; he was represented by counsel; and the record does not reflect any difficulties or irregularities attributable to Churchill's remote appearance. (*People v. Nieves, supra*, 11 Cal.5th at p. 509 [defendant's absence from restitution hearing not prejudicial where she was represented by counsel and nothing in record indicated she would have added any significant information to the issues or to counsel's argument].) Under these circumstances, the trial court's failure to secure a waiver of the right an in-person appearance was harmless beyond a reasonable doubt. (*People v. Davis, supra*, 36 Cal.4th at p. 532.) The error was also necessarily harmless under the state's less demanding reasonable probability standard. (*People v. Avila, supra*, 38 Cal.4th at p. 598.)

---

proceedings. Instead, as was stated at the start of the December 22 hearing, Churchill appeared via remote videoconference and was "afforded not only the opportunity to see and hear all of the evidence against him, but to testify in his own defense if he [chose] to." What he was not able to do was be physically present in the courtroom.

We similarly conclude the trial court's failure to obtain a waiver of Churchill's presence at the February 11, 2021 sentencing was harmless. First, by not objecting to the remote appearance or asking to be physically present in the courtroom, Churchill forfeited his claim of error. (See *People v. Martin* (1992) 3 Cal.App.4th 482, 486 [defendant "waived his right to insist on a revocation hearing by filing a statement in mitigation which acknowledged that he would be sentenced . . . and failing to object at the sentencing hearing either to the sentencing procedure or to the grounds for revocation"].) There is no suggestion in the record that any objection would have been "futile," as Churchill argues.

Second, any error was harmless under state and federal standards. Churchill appeared remotely at sentencing where he was represented by counsel who argued for reinstatement of probation with modified terms and conditions. Churchill was able to see, hear, and speak at the proceedings via videoconference; his image was broadcast into the courtroom. As with the probation violation hearing, the record does not reflect any difficulties or irregularities attributable to Churchill's remote appearance.

Moreover, the terms of the plea agreement and the reasons specified on the record demonstrate that even if Churchill had been physically present at the sentencing hearing, the outcome would not have been different. Section 1203.2 authorizes a court granting probation in lieu of a state prison sentence to suspend either the "imposition" or the "execution" of that state prison sentence. Where *imposition* of sentence is suspended, a court has "full sentencing discretion on revoking probation." (*People v. Howard* (1997) 16 Cal.4th 1081, 1087.) But where the *execution* is suspended, " '[t]he revocation of the suspension of execution of the judgment brings the former judgment into full force and effect.' " (*Id.*, quoting *Stephens v. Toomey* (1959)

51 Cal.2d 864, 874.) Thus, when a court chooses to suspend execution, that exact sentence must be imposed if probation is revoked and the defendant is sentenced to prison. (*People v. Howard*, at pp. 1087–1088 [citing § 1203.2, subd. (c) and Cal. Rules of Court, former rule 435(b)(2)[7]; see *People v. Colado* (1995) 32 Cal.App.4th 260, 263–264 [finding the court has no authority to modify a sentence after probation has been revoked].)

Defense counsel was able to file a defense statement in mitigation that argued for reinstatement of probation. The court invited Churchill to explain the failures that resulted in his violations of probation. Churchill took advantage of the trial court's offer and stated his reasons. The court then demonstrated its exercise of discretion in deciding that a continued grant of probation was not appropriate, particularly in the context of the original sentencing discussion. Thus both the nature of the suspended sentence and the sentencing record demonstrate that Churchill's in-person appearance would not have changed the hearing outcome. Any error in failing to expressly confirm Churchill's consent to a remote appearance was harmless under any standard.

B. Right to Counsel and Confidential Communications

Churchill next argues that the court's refusal to grant his request to confer confidentially with his attorney at both the probation violation and sentencing hearings improperly interfered with his right to counsel and also requires reversal. In this limited, factually specific context, we disagree.

1. Applicable Law

The Sixth Amendment guarantees a criminal defendant the right to "assistance of counsel for his defense." (U.S. Const., 6th Amend.) Although there is no per se constitutional right to appointed counsel at a probation

---

[7] Now California Rules of Court, rule 4.435.

revocation hearing (*Gagnon v. Scarpelli* (1973) 411 U.S. 778, 788–791), in California, a defendant's right to the assistance of counsel has been extended to all " 'critical' stages of the criminal process." (*Gardner v. Appellate Division of Superior Court* (2019) 6 Cal.5th 998, 1004.) This includes proceedings related to probation revocations. (*People v. Bauer* (2012) 212 Cal.App.4th 150, 156; *People v. Vickers* (1972) 8 Cal.3d 451, 461–462.)

Even so, "[c]onfidential communication between a defendant and his lawyer is itself not a separate 'right' that the federal Constitution guarantees, but rather an aspect of ensuring fulfillment of the right to assistance of counsel." (*People v. Alexander* (2010) 49 Cal.4th 846, 887–888.) To demonstrate a violation of the right to counsel, there must be either (1) the complete denial of counsel or its equivalent, or (2) the denial of the effective assistance of counsel. (*United States v. Chronic* (1984) 466 U.S. 648, 659; *Strickland v. Washington* (1984) 466 U.S. 668; *McMann v. Richardson* (1970) 397 U.S. 759, 771, fn. 14.) Where, as here, Churchill had counsel, to require reversal he must show that the failure to grant his confidential communication requests at the probation violation and sentencing hearings rendered his counsel's performance deficient such that there is a reasonable probability the outcome could have been different were it not for the deficient performance. (*Strickland, supra,* 466 U.S. at pp. 694–695.) Churchill has not met that two-pronged burden.

2. Any Error Harmless

During the probation violation hearing, Churchill's counsel requested the opportunity to confer confidentially with his client after the court inquired about the presentation of any "affirmative defense evidence." Because of the remote proceeding dynamics, the court denied that request but gave Churchill and his attorney the opportunity to confer off the record but in

open court. Proceeding in this manner arguably violated emergency rule 5(e)(2) (counsel not required to be present with defendant "provided that the audio and/or video conferencing system or other technology allows for private communication between the defendant and his or her counsel".)

However, on this record any error was harmless. After conferring off the record, the defense rested; Churchill did not offer any additional evidence. Instead, Churchill argued that while the prosecution had proved "technical" violations of probation, they did not prove the violations were willful. Churchill also questioned the certainty of the officer's conclusion that the blue pills stamped M15 were morphine.

In light of the substantial evidence (see § II.C, *post*) presented to prove multiple violations by the requisite preponderance of the evidence (see *People v. Rodriguez* (1990) 51 Cal.3d 437, 441–443), Churchill's argument on appeal falls short. It is difficult to envision how a separate confidential conversation would have resulted in the presentation of affirmative defense evidence that would have led to a different outcome. In fact, if Churchill had decided to testify, one can more easily envision that testimony undermining his willfulness argument rather than weakening the prosecution's case. Accordingly, there is no reasonable probability the outcome would have been different if the confidential communication request had been granted.

We reach a similar conclusion regarding the confidential communication request at the sentencing hearing. There, counsel asked to speak with Churchill to ascertain if there was additional information to present in mitigation. The court declined the request as the conversation could not be confidential. Churchill then addressed the court directly and explained his efforts to address his mental health and substance abuse.

Where the proscribed sentence had already been determined but had only been suspended, the decision for the court at sentencing was straightforward: whether to exercise its discretion and reinstate probation or to impose execution of the four-year sentence previously suspended. Here, through Churchill's proffered statement and his counsel's argument, Churchill had ample opportunity to demonstrate the propriety of continued probation, but the court remained unconvinced. Churchill's counsel conceded he had no additional evidence to provide and then requested the opportunity to confer confidentially with his client to potentially secure additional information that might persuade the court.

But, where the trial court has the authority and discretion to control the court proceedings (Code Civ. Proc., § 128, subd. (a)(3)); where a confidential video remote conversation was not possible; and where the court had already questioned the propriety of the initial grant of probation; there is no reasonable probability the outcome would have been different if the confidential communication request had been granted.

Thus, in both instances, the denial of the confidential communication requests does not warrant reversal.[8]

---

[8] We do not reach our decision lightly or without profound concerns about the violations of the emergency rules and the denial of the attorney-client confidential communication requests; charged with upholding the law, courts should strive to accommodate both whenever appropriate. Rather, we base this ruling on the unique and narrow circumstances presented in Churchill's particular probation violation context.

C. Substantial Evidence Supports the Revocation of Probation

Churchill argues that the prosecutor's failure to present testimony from a criminalist or bring forth lab results establishing the presence of morphine in the pills taken from Churchill's possession is fatal to the trial court's finding that Churchill failed to obey all laws in possessing morphine without a prescription. He further contends there is insufficient evidence that his probation violations were willful. We disagree.

In a formal probation revocation hearing, the prosecution bears the burden of proving a probation violation by a preponderance of the evidence, after which, the decision to revoke probation falls within the discretion of the trial court. (See, e.g., *People v. Rodriguez, supra,* 51 Cal.3d at pp. 441–443; *In re Coughlin* (1976) 16 Cal.3d 52, 56.) The evidence presented must "support a conclusion the probationer's conduct constituted a willful violation of the terms and conditions of probation." (*People v. Galvan* (2007) 155 Cal.App.4th 978, 982 [citing *People v. Zaring* (1992) 8 Cal.App.4th 362, 378–379].) But section 1203.2 confers "great flexibility upon judges making the probation revocation determination." (*Rodriguez*, at p. 443 [citing *In re Coughlin*].) An appellate court reviews a revocation decision for substantial evidence (*People v. Superior Court* (*Jones*) (1998) 18 Cal.4th 667, 681), giving great deference to the trial court and resolving all inferences in favor of the judgment. (*People v. Kurey* (2001) 88 Cal.App.4th 840, 848–849.)

The testimony presented under direct and cross-examination provided brief but targeted substantial evidence that Churchill had violated the terms of his probation in multiple ways. Churchill's questioning of the proper identification of the morphine and his argument that his "technical" violations were not willful did nothing to undermine this evidence. Thus, we conclude substantial evidence supports the court's findings.

DISPOSITION

The findings and imposition of sentence are affirmed.

_____
Desautels, J.*

WE CONCUR:

_____
Pollak, P.J.

_____
Streeter, J.

A162078 People v. Churchill

* Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.