

NOT TO BE PUBLISHED IN OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

A132507

v.

**(San Mateo County
Super. Ct. No. SC069593A)**

MICHAEL GEORGE SCHAEFFER,

Defendant and Appellant.

_____ /

A jury convicted appellant Michael George Schaeffer of two felony counts of diverting home improvement funds (Pen. Code, § 484b),¹ two misdemeanor counts of receiving an excessive downpayment for a home improvement contract (Bus. & Prof. Code, § 7159.5, subd. (a)(3)), and one misdemeanor count of working as a contractor without a license (Bus. & Prof. Code, § 7028). The court placed appellant on probation for three years and ordered him to pay a total of approximately \$400,000 in restitution. The court also ordered appellant to serve 18 months in county jail, with credit for time served.

Appellant timely appealed. He has asked this court to conduct an independent review pursuant to *People v. Wende* (1979) 25 Cal.3d 436.

¹ Unless otherwise noted, all further statutory references are to the Penal Code.

FACTUAL AND PROCEDURAL HISTORY

The People charged appellant with two felony counts of diverting home improvement funds (§ 484b), two felony counts of grand theft (§ 487, subd. (a)), two misdemeanor counts of receiving an excessive downpayment for a home improvement contract (Bus. & Prof. Code, § 7159.5, subd. (a)(3)), and one misdemeanor count of working as a contractor without a license (Bus. & Prof. Code, § 7028). The parties waived the preliminary hearing and the case proceeded to trial.

Chang Residence

In July 2007, Dominic Chang hired appellant's company, MGS Construction, Inc., to remodel a bathroom in Chang's Burlingame house and build a two-story addition. Pursuant to a written agreement, appellant agreed to design the project, obtain the necessary permits, remodel the bathroom, and build the addition for \$255,000. Chang paid appellant \$17,000 for the design and building permit applications.

Appellant remodeled the bathroom but failed to do any additional construction or perform any work on Chang's house after December 2007. From December 2007 to April 2008, Chang paid appellant additional money pursuant to the contract even though appellant was not performing any work on the house. In May 2008, Chang learned appellant's contractor's license had been revoked; appellant told Chang he was having financial problems. He promised to refund Chang's money, but he returned only \$1,200 of the \$134,000 he received from Chang.

Lee-Robbins Residence

In July 2007, Linda Lee-Robbins hired appellant's company, MGS Construction, Inc., to build a second story on her Pacifica home. Appellant agreed to design the addition, obtain permits and materials, and to build the second story for \$379,418. Lee-Robbins paid appellant a \$16,125 retainer for planning and design; over the next several months, Lee-Robbins paid appellant an additional \$193,794 to draft the designs, obtain the permits, and purchase the materials. Lee-Robbins paid appellant a total of \$209,919. Appellant began the demolition work on Lee-Robbins's house but did not obtain the

permits or provide her with any building materials. Lee-Robbins terminated her contract with appellant after he informed her his contractor's license had been suspended.

David Hirzel, an architect, worked with MGS Construction, Inc., on the Chang and Lee-Robbins projects. Hirzel terminated his relationship with appellant in June 2008, after appellant stopped paying him. Gene Bell, an investigator for the Contractor's State License Board, investigated a complaint made by Chang about appellant. Bell interviewed Chang, Lee-Robbins, and appellant. Bell determined appellant received money for the Chang and Lee-Robbins's projects but had not performed pursuant to his contracts with either client.

Dismissal of Charges, Verdict, and Sentencing

During trial, the court dismissed both grand theft charges (§ 487, subd. (a)) pursuant to section 1118.1. The jury convicted appellant of two felony counts of diverting home improvement funds (§ 484b), two misdemeanor counts of receiving an excessive downpayment for a home improvement contract (Bus. & Prof. Code, § 7159.5, subd. (a)(3)), and one misdemeanor count of working as a contractor without a license (Bus. & Prof. Code, § 7028). After the verdict, the court relieved appointed counsel and appointed a public defender to represent appellant. The court denied appellant's request for a transcript of the trial to be provided at court expense. Appointed counsel found insufficient basis to make a motion for a new trial.

At the conclusion of the sentencing hearing, the court placed appellant on probation for three years, subject to various terms and conditions. The court ordered appellant to serve 18 months in county jail for the convictions of diverting home improvement funds (§ 484b), with credit for time served. The court also ordered appellant to pay \$402,044.33 in restitution.

DISCUSSION

We appointed counsel to represent appellant on appeal. Counsel presents no argument for reversal, but asks this court to conduct an independent review of the record in accordance with *Wende, supra*, 25 Cal.3d at pages 441-442. Counsel informed appellant that he had the right to file a supplemental brief on his own behalf, but

appellant declined to do so. We have conducted our independent review and find no arguable issues. Appellant was ably represented by counsel. The verdict is supported by substantial evidence. The court did not abuse its discretion by awarding restitution. There was no error in sentencing.

DISPOSITION

The judgment is affirmed.

Jones, P.J.

We concur:

Simons, J.

Bruiniers, J.