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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

ELOY ORONA,

Defendant and Appellant.

A133305

**(San Mateo County
Super. Ct. No. SC064512)**

Eloy Orona appeals from a judgment sentencing him to prison for 16 months following the revocation of his probation. His court-appointed counsel has filed a brief raising no issues, but seeking our independent review of the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*) and *Anders v. California* (1967) 386 U.S. 738 (*Anders*). We find no arguable issues and affirm.

I. BACKGROUND

In 2009, appellant pled no contest to a felony charge that he had failed to register as a sex offender and admitted a prior conviction allegation under the Three Strikes law. (Pen. Code, §§ 290, subd. (g), 1170.12.)¹ At the initial sentencing hearing, the court struck the prior conviction allegation under section 1385 and placed appellant on probation for a period of three years.

¹ Further statutory references are to the Penal Code.

On July 21, 2010, the probation department filed an affidavit stating that appellant had violated the terms of his probation by failing to report and by failing to register under section 290. Appellant appeared on March 8, 2011 and denied the allegations.

At a contested probation revocation hearing, Deputy Probation Officer Kanhai testified that on June 7, 2010, appellant informed him he had moved to a Comfort Inn in San Mateo. Kanhai advised appellant that he was required to register within five days and also asked him to sign off on his conditions of probation. Appellant refused to sign off on his conditions and Kanhai told him to report back on June 10, 2010. When appellant missed his appointment on June 10, Kanhai left him a voicemail telling him to report by June 14. On June 14, 2010, appellant appeared at the probation department and signed off on the conditions, and was told by Kanhai to report again on July 12, 2010. Kanhai again instructed appellant to register as a sex offender at the San Mateo Police Department.

Appellant did not show up for his appointment on July 12, 2010. Kanhai tried to contact him by telephone and learned that he had checked out of the Comfort Inn. Appellant's whereabouts were unknown until he was arrested on March 6, 2011. As of July 19, 2010, the date the probation violation affidavit was filed, appellant had not registered as a sex offender.

The trial court found appellant to be in violation of his probation and imposed a low-term prison sentence of 16 months. In so doing, it acknowledged that appellant was elderly and in poor health, but concluded that he was not likely to comply with sex offender registration requirements if probation was reinstated. Appellant received a total of 269 days presentence credits (135 actual days; 134 days in conduct credits).

II. DISCUSSION

As required by *People v. Kelly* (2006) 40 Cal.4th 106, 124, we affirmatively note that appointed counsel has filed a *Wende/Anders* brief raising no issues, that appellant has been advised of his right to file a supplemental brief, and that appellant did not file such a brief. We have independently reviewed the entire record for potential error and find none.

Appellant did not appeal from the original judgment following his plea to a violation of section 290. That judgment is now final and may not be attacked in this appeal. (*People v. Ramirez* (2008) 159 Cal.App.4th 1412, 1421.) The probation officer's testimony supplied substantial evidence to support the trial court's finding that appellant had violated probation by failing to register as a sex offender and by failing to report to the probation officer. (See *People v. Jackson* (2005) 134 Cal.App.4th 929, 935.) The 16-month prison sentence imposed following the probation violation was authorized by law, and the court did not abuse its discretion when it declined to reinstate probation. (See *People v. Downey* (2000) 82 Cal.App.4th 899, 909.)

We are satisfied that appellant's appointed attorney has fully complied with the responsibilities of appellate counsel and that no arguable issues exist. (*Smith v. Robbins* (2000) 528 U.S. 259, 283.)

III. DISPOSITION

The judgment is affirmed.

NEEDHAM, J.

We concur.

JONES, P. J.

SIMONS, J.