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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.

CHADLEY WAYNE THAMES,

Defendant and Appellant.

A133675

**(MENDOCINO County
Super. Ct. Nos. MCUKCR CR
11-18391, 07-81639)**

Chadley W. Thames appeals from a judgment of conviction and sentence imposed after he entered a guilty plea in one case and admitted a violation of probation in another. His attorney has filed a brief seeking our independent review of the record, pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (see *Anders v. California* (1967) 386 U.S. 738), in order to determine whether there is any arguable issue on appeal. We find no arguable issue and affirm.

I. FACTS AND PROCEDURAL HISTORY

A. Case No. 07-81639

In December 2007, a complaint in superior court case number MCUKCR CR 07-81639 charged Thames with cultivating marijuana (Health & Saf. Code, § 11358), possessing marijuana for sale (Health & Saf. Code, § 11359), exhibiting a firearm in the presence of an officer (Pen. Code, § 417, subd. (c)), and being a felon in possession of a firearm (Pen. Code, § 12021, subd. (a)). With respect to the two Health and Safety Code

charges, it was further alleged that Thames was armed with a firearm in the commission of the offenses. (Pen. Code, § 12022, subd. (a)(1).)

In May 2008, Thames pled guilty to the cultivating marijuana charge and admitted that he was armed with a firearm in his commission of the offense. In accord with the terms of his negotiated plea, the court granted the prosecution's motion to dismiss the remaining counts.

On July 30, 2008, the court placed Thames on probation for three years subject to certain terms and conditions, including that he: serve 180 days in county jail; abstain from possessing, purchasing, and consuming alcoholic beverages; not enter any place of business where alcohol was the chief item of sale; not possess any narcotics or restricted drugs; submit to physical examination and chemical testing when ordered by any police officer; and be subject to a warrantless search.

On August 20, 2008, Thames' probation was summarily revoked based on the allegation that he had been arrested for driving under the influence of alcohol. (Veh. Code, § 23152, subs. (a), (b).) Thames admitted his violation of probation. On August 22, 2008, the court reinstated Thames' probation on the condition that he serve an additional 90 days in county jail.

On January 4, 2010, Thames' probation was again summarily revoked, based on the allegation that he was seen leaving a bar under the influence of alcohol. Thames admitted his violation. On January 19, 2010, the court reinstated Thames' probation on the condition that he serve 45 days in county jail; the jail time, however, was to be suspended upon Thames' completion of a substance abuse treatment program. On May 28, 2010, after Thames completed the treatment program, the court permanently suspended imposition of the 45-day jail term.

On July 13, 2011, Thames' probation was summarily revoked yet again, based on the allegation that he committed a battery. (Pen. Code, § 243, subd. (e)(1).) The ensuing disposition was reached in conjunction with the disposition in another proceeding – case number MCKRCRCR 11-18391 – discussed next.

B. Case Number 11-18391

On August 9, 2011, a complaint was filed in superior court case number MCKUCRCR 11-18391, charging Thames with making a criminal threat (Pen. Code, § 422) and perpetrating domestic violence (Pen. Code, § 273.5, subd. (a)) on August 6, 2011.¹

The events underlying these charges were described as follows in the probation department's report. On August 6, 2011, Thames' girlfriend, Susan Porter, drove him from their residence to a market so he could buy cigarettes. She insisted on driving because Thames had been drinking alcohol all day. When they got to the market, Thames took the van's keys and entered the store. After he left the store, he began talking to a friend in the parking lot. Porter walked up to him, grabbed the van's keys, and told Thames that he was too intoxicated to drive. Porter and Thames returned to the van. Thames, angry that Porter had disrespected him, told Porter that he was going to kill her. He then struck her in the head with a coffee mug, opening a three-inch gash and causing her to lose consciousness. When questioned by sheriff's deputies later that day, Thames denied having a physical fight with Porter, but deputies arrested him nonetheless.

¹ These charges apparently spurred an amended probation revocation petition in case number 07-81639, dated August 22, 2011, alleging that Thames had violated his probation as a result of his violation of Penal Code section 243, subdivision (e)(1) on July 11, 2011, and his violation of Penal Code sections 273.5 and "242" on "August 8, 2011." However, our review of the record discloses no dispute that Thames' alleged domestic violence and arrest occurred on August 6, not August 8. In addition, it appears the reference to Penal Code section 242 should actually be to Penal Code section 422. We also note that, although the offense date of August 6, 2011 is more than three years after the initial commencement of probation on July 30, 2008, the period of probation was tolled by 17 days as a result of the prior summary revocations. (Pen. Code, § 1203.2, subd. (e).) On this basis, the three-year probationary term was extended to August 16, 2011. The record is unclear whether, at the time of the prior reinstatements of probation, the court extended the probationary period to the full three-year limit, but the matter is unnecessary to resolve in light of the tolling by the prior revocations. The summary revocation on July 13, 2011, for the Penal Code section 243, subdivision (e)(1) offense also tolled the probation period at least as to that offense.

In a later statement to his probation officer, Thames acknowledged that he had played a role in the incident and believed he would benefit from anger management counseling.

On August 24, 2011, while represented by defense counsel, Thames pled guilty to a violation of Penal Code section 273.5 in case number 11-18391 and admitted that he violated his probation in case number 07-81639 on the basis of that offense. The court apprised Thames of his constitutional rights, determined that he voluntarily and knowingly waived them, and found a factual basis for the plea. In accord with the plea agreement, the remaining count in case number 11-18391 was dismissed.

C. *Sentencing*

On October 26, 2011, the court sentenced Thames in both cases. In case number 11-18391, the court denied Thames' request for probation and sentenced him to the middle term of three years in state prison for the conviction under Penal Code section 273.5.² Thames was awarded presentence credits of 19 days.

In case number 07-81639, the court terminated Thames' probation and sentenced him to a subordinate and consecutive term of eight months (one-third the middle term) for the conviction under Health and Safety Code section 11358. Thames was awarded presentence credits of 229 days, a total to which defense counsel expressly agreed at the hearing.

This appeal followed.

II. DISCUSSION

Thames' appellate counsel represents in the opening brief in this appeal that he wrote to Thames and advised him of the filing of a *Wende* brief and his opportunity to personally file his own supplemental brief within 30 days thereafter.

We have not received any supplemental brief from Thames.

We find no arguable issues on appeal.

² The middle term for Penal Code section 273.5 is three years. In imposing sentence, the court initially referred to the three-year term as the "mitigated" term but later advised that it was the "midterm." The minute order identifies the three-year term correctly as the middle term. The abstract of judgment misidentifies it as an upper term, but no correction is necessary because the abstract correctly states the number of years.

There are no legal issues that require further briefing.³

III. DISPOSITION

The judgment is affirmed.

NEEDHAM, J.

We concur.

JONES, P. J.

SIMONS, J.

³ In a separate petition for writ of habeas corpus, appellate case number A136027, Thames challenged the competency of his trial counsel. We have denied that petition by separate order filed this date.