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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

TYRONE KINSEY,

Defendant and Appellant.

A133730

(Solano County  
Super. Ct. No. FCR267949)

Defendant Tyrone Kinsey appeals following revocation of probation and imposition of a prison sentence. Defendant's appointed counsel on appeal reviewed the record of this case, did not identify any trial court errors, and asked this court for an independent review of the record to determine if any arguable issues exist for review on appeal. (*Anders v. California* (1967) 386 U.S. 738, 744; *People v. Kelly* (2006) 40 Cal.4th 106, 119; *People v. Wende* (1979) 25 Cal.3d 436, 441-442.) Defendant was advised that he could file a supplemental brief with this court raising any issues he wished to call to our attention, and has not done so. We have reviewed the record and, finding no errors or arguable issues for review, affirm the judgment.

**I. FACTS**

On June 19, 2009 at approximately 1:30 a.m., defendant was driving a vehicle observed by the police to be weaving back and forth within its lane of travel. The police stopped the vehicle and conducted field sobriety tests, which defendant failed. A preliminary alcohol screening test was conducted that found defendant to be over the

legal limit. Defendant was arrested and transported to the police station. A breath test determined defendant's alcohol level to be .14 percent.

On June 29, 2009, defendant was charged by complaint with various offenses related to drunk driving. A preliminary hearing was held and an information filed. In January 2011, defendant entered a guilty plea to one count of driving with .08 percent or more of alcohol in his blood and admitted three prior convictions for the same offense. (Veh. Code, § 23152, subd. (b).) In exchange for his plea, other counts were dismissed and the allegation that defendant served a prior prison term was stricken. Defendant consented to the court considering at sentencing the facts underlying a dismissed count of driving when his license was suspended for drunk driving. (Veh. Code, § 14601.2, subd. (a); *People v. Harvey* (1979) 25 Cal.3d 754, 758.) Defendant also waived his right to appeal.

On February 22, 2011, imposition of sentence was suspended and defendant was placed on probation with various conditions, among them that he obey all laws and abstain from alcohol and drugs. He was also ordered to serve one year in jail, which was satisfied by credit for time served. Defendant was ordered to enroll in a residential treatment program yet to be determined. On May 20, 2011, the treatment program was identified as the Oakland Salvation Army program, and defendant was ordered to successfully complete the program and, if terminated for any reason, to contact probation within two days.

On June 1, 2011, defendant reported to the program as directed but was refused admission because he tested positive for drugs: oxycodone, opiates, and cocaine. A program official advised the probation department of this fact. Defendant himself did not report back to probation. The court summarily revoked probation and issued a bench warrant for defendant's arrest. Defendant was apprehended on June 30, 2011. The police reported that defendant, when apprehended, "would not comply with commands, was argumentative, and pulled away while being handcuffed." The police subdued defendant with a Taser pointed at his neck and charged him with resisting arrest. (Pen. Code, § 148, subd. (a)(1).) The police said defendant smelled of alcohol when arrested.

A formal probation revocation hearing was held on August 30, 2011. The court found defendant in violation of probation for failing to obey all laws, failing to complete a treatment program, and failing to report to probation upon being refused admission to the Salvation Army program. The probation department prepared a report for sentencing recommending that a further grant of probation be denied and that defendant be sentenced to prison. The probation officer observed that defendant's "actions to date demonstrate continued criminality, a blatant disregard for the orders of the Court, and an inability or unwillingness to comply" with probation.

On October 20, 2011, the court denied further probation and sentenced defendant to the mid-term of two years (Pen. Code, § 18; Veh. Code § 23550, subd. (a)) with the sentence to be served in county jail (Pen. Code, § 1170, subd. (h)(2)). Defendant was awarded custody and conduct credits of 602 days. Defendant filed a notice of appeal on November 4, 2011.

## II. DISCUSSION

Neither appointed counsel nor defendant has identified any issue for our review. We have independently reviewed the entire record and find no errors or arguable issues for review. (*Anders v. California, supra*, 386 U.S. at p. 744; *People v. Wende, supra*, 25 Cal.3d at pp. 441-442.)

Defendant had the benefit of able counsel throughout the proceedings. Defendant's plea was entered after full advisement of his constitutional rights, and was entered freely and voluntarily. Defendant was advised that he faced a maximum sentence of three years in custody but would be referred to probation to be screened for a treatment program. The court granted defendant probation conditioned, among other things, upon completing a treatment program.

Substantial evidence supports the trial court's finding that defendant failed to meet the terms of his probation. An express condition of the grant of probation was that defendant successfully complete a treatment program and, if terminated for any reason, to contact probation within two days. Defendant was refused admission to the program on

June 1, 2011, when he tested positive for drugs. Rather than report back to probation, defendant absconded. He was apprehended almost a month later, on June 30, 2011, and resisted the police during his arrest. In resisting the police, defendant violated the law and thus violated another express term of his probation requiring that he obey all laws. The evidence fully supports the trial court's finding that defendant violated the terms of his probation.

Upon finding a violation of probation, the court acted reasonably in denying a further grant of probation and imposing sentence. The sentence imposed was the two-year mid-term, which was fully consistent with the plea agreement specifying a maximum three-year term. The court properly ordered defendant to serve his sentence in local custody. (Pen. Code, § 1170, subd. (h)(2)). The court also properly awarded custody and conduct credits. There are no errors or arguable issues for review.

### III. DISPOSITION

The judgment is affirmed.

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Sepulveda, J.\*

We concur:

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Reardon, Acting P.J.

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Rivera, J.

\* Retired Associate Justice of the Court of Appeal, First Appellate District, Division 4, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.