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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

NOEY JOHNSON, JR.,

Defendant and Appellant.

A133942

(Mendocino County

Super. Ct. No. SCUKCR-11-16658)

On June 29, 2011, defendant Noey Johnson, Jr., was placed on probation following his no contest plea to one count of unlawful taking of a motor vehicle (Veh. Code, § 10851, subd. (a)) and one count of reckless driving while evading a peace officer (Veh. Code, § 2800.2, subd. (a)). On November 18, 2011, following his admission of a probation violation, the court denied his request for reinstatement of probation and executed a previously imposed three-year, eight-month prison sentence. Defendant filed a timely notice of appeal.

Defendant's attorney has filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436, requesting our independent review of the record. Defendant was informed of his right to file a supplemental brief, but has not done so. We find no arguable issue and shall affirm.

**Discussion**

The conditions of defendant's probation required service of a 180-day county jail term and completion of the Delancey Street drug treatment program. He was ordered to

surrender to the county jail on July 21, 2011. Defendant admitted that he failed to surrender to the county jail as ordered and had failed to contact his probation officer.

The trial court did not abuse its discretion in denying defendant's request to reinstate probation and in executing the prison sentence. At the time defendant was originally sentenced, he was presumptively ineligible for formal probation under Penal Code section 1203, subdivision (e)(4). The court, however, found that unusual circumstances supported the grant of probation, including the opportunity for residential treatment. The probation department advised defendant that if he did not take advantage of the opportunity for treatment, no further chances would be recommended.

At the sentencing hearing following the revocation of probation, defense counsel acknowledged that defendant had serious substance abuse problems and argued that the failure to turn himself in to serve the county jail time was emblematic of his addiction and indicated how badly he needs the treatment program contemplated by the original plea agreement. Defendant admitted that he had "been to prison numerous times for drugs [and] for violations of parole." He blamed his recidivism on his drug problems, claimed that he had not previously been offered a drug treatment program and asked that he be allowed to serve his jail term and released directly to a program.

The court rejected defendant's request, explaining, "the last time you were interviewed . . . for a probation report you made very similar comments. And [the probation officer] was persuaded by you at that time or at least enough to put a vote of confidence in you and that confidence wasn't lived up to." The court added that "the conduct that gave rise to these convictions . . . is very dangerous. You have had other opportunities in the past with lots of structure in place. . . . [Y]our latest violation isn't just about failing to turn yourself in, it is about committing criminal offenses while you were out during that time frame. And that just put this court over the edge."

The court's decision finds ample support in the probation report. Defendant has a lengthy criminal history dating back to 2001, which includes numerous probation and parole violations. The summary of the underlying convictions establishes that defendant was arrested with a blood alcohol level of .19 following a high speed chase through town

that ended with defendant knocking over a street sign and running through the front yard of a home before coming to a stop. Finally, the report indicates that defendant was arrested on August 19, 2011, by the Ukiah Police Department on a “violation of Section 166.4 of the Penal Code, disobey a court order, and a violation of probation.” Although the report contains no facts regarding the arrest, the court confirmed with counsel that this arrest involved a “subsequent violation of the law” that occurred after his failure to report to jail. Based on this record, the court reasonably exercised its discretion in executing the previously imposed sentence.

**Disposition**

The judgment is affirmed.

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Pollak, J.

We concur:

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McGuinness, P. J.

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Siggins, J.