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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.
ANDREW DAVID STIEFEL,
Defendant and Appellant.

A134243
(Sonoma County
Super. Ct. No. SCR-458126)

Defendant Andrew David Stiefel appeals the execution of a suspended sentence following his exclusion from the California Rehabilitation Center (CRC). Defendant's appellate counsel has filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436, and requests that we conduct an independent review of the record. Defendant was informed of his right to file a supplemental brief and did not file such a brief. (See *People v. Kelly* (2006) 40 Cal.4th 106, 124.) We have conducted the review requested by appellate counsel and, finding no arguable issues, affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

On December 7, 2007, defendant appeared for sentencing on guilty-plea convictions in three separate felony cases. In case number SCR-458126, the court imposed the mid-term of three years on count one for unlawful taking of a vehicle in violation of Vehicle Code, section 10851, subdivision (a). The court imposed the mid-term of three years on count two, stayed pursuant to Penal Code, section 654,¹ for

¹ Further statutory references are to the Penal Code unless otherwise stated.

receiving stolen property in violation of section 496d, subdivision (a). Also, the court imposed a consecutive term of eight months (one-third the mid-term) on count three for possession of narcotics in violation of Health and Safety Code, section 11377, subdivision (a). In case number SCR-522720, the court imposed a consecutive term of eight months (one-third the mid-term) for making criminal threats in violation of section 422. Last, in case number SCR-503576, the court imposed a further consecutive term of eight months (one-third the mid-term) for possessing narcotics in violation of Health and Safety Code, section 11377, subdivision (a). The aggregate term imposed by the court for the convictions in all three cases was five years. Furthermore, defendant stipulated to the allegation that he is addicted to, or is in danger of addiction to, narcotic drugs, under Welfare and Institutions Code, section 3051 (section 3051). After finding defendant is in danger of addiction under section 3051, the court suspended execution of the sentence imposed and committed defendant to the CRC for a period of five years.

On October 24, 2011, criminal proceedings were reinstated and the matter referred to probation, following defendant's exclusion from CRC on safety grounds. At the sentencing hearing held on November 22, 2011, defendant asked the court to place him on probation and allow him to complete the Redwood Gospel Treatment Program. The court vacated the commitment order to CRC, denied probation and committed defendant to the Department of Corrections and Rehabilitation for the previously suspended term of five years. Per the probation report, the court initially awarded total custody credits of 1095 days in SCR 458216, 240 days in SCR 503576 and five days in SCR 522720. Defense counsel pointed out that the custody calculation in the probation report may not have accounted for defendant's time in custody between January and July 2011. The court ordered the probation officer to investigate the matter and report back to the court and the parties.

At a subsequent credits hearing held on January 13, 2012, the probation officer advised the court that the calculation of custody credits in the probation report was inaccurate. The probation officer stated custody credits should reflect 1,335 days in SCR-458126, 219 days in SCR-522720 and 240 days in SCR-503576. The prosecutor

and defense counsel concurred in the probation officer's revised credit calculation. The court awarded custody credits as recommended by the probation officer and defense counsel withdrew a habeas petition she had filed in an attempt to expedite resolution of the custody credit issue. The custody credits awarded by the court are accurately reflected in revised abstract of judgment filed on January 13, 2012.

DISCUSSION

A CRC commitment is a unique interim disposition of a criminal case. (See *People v. Barnett* (1995) 35 Cal.App.4th 1, 3 (*Barnett*)). Although it is a judgment for purposes of appeal (§ 1237), it is not a final judgment, (*Barnett, supra*, 35 Cal.App.4th at p. 4). Whether the defendant successfully completes the program (Welf. & Inst. Code, § 3200), is excluded from the program as unfit (Welf. & Inst. Code, § 3053, subd. (a)), or serves all the available confinement time (Welf. & Inst. Code, § 3201, subd. (c)), he or she must be returned to the trial court by CRC for resentencing. (See *Barnett, supra*, 35 Cal.App.4th at pp. 3-4.)

Furthermore, “an involuntary termination [from CRC is] a discharge from commitment which then empowers the court to enter a sentence appropriate to the circumstances.” (*People v. Nubla* (1999) 74 Cal.App.4th 719, 726 (*Nubla*)). “[T]he sentencing court retains jurisdiction over the defendant during the period when the defendant is committed to CRC.” (*Id.* at p. 728.) After an involuntary termination from CRC, “the defendant [is to] be returned to the court in which the case originated ‘for such further proceedings on the criminal charges as that court may deem warranted,’ and . . . the ‘court shall then promptly set for hearing the matter of the sentencing of the defendant upon the conviction which subsequently resulted in the original civil commitment.’ ” (*Ibid.*)

The trial court has broad discretion under the statutes to modify the unexecuted prison sentence, to deem it served, suspend further proceedings, even to dismiss the case if not barred by other provisions of law. (*Nubla, supra*, 74 Cal.App.4th. at pp. 725, 729.) “[T]here is no statutory or administrative mandate that the previously imposed judgment be in full force and effect upon the defendant's rejection from CRC.” (*Id.* at p. 728.) The

only limitation is that a defendant may not be sentenced to a greater term than originally imposed and suspended. (*Id.* at pp. 726, 729.)

Here, the court sentenced defendant to the aggregate five-year term originally imposed and suspended. Moreover, the record demonstrates that the trial court was fully aware of its sentencing discretion when it imposed sentence. (See *People v. Brown* (2007) 147 Cal.App.4th 1213, 1228 [“Defendants are entitled to ‘sentencing decisions made in the exercise of the “informed discretion” of the sentencing court,’ and a court that is unaware of its discretionary authority cannot exercise its informed discretion. [Citation.]”].) In this regard, the court received and carefully reviewed an updated probation report, considered and rejected defendant’s request for a further probationary sentence, and imposed the sentence recommended in the probation report “for the reasons stated therein.” Those reasons included defendant’s failure on two prior residential treatment programs, as well as the fact defendant continued to reoffend by absconding from parole supervision for approximately six months and incur[ing] “at least one other violation of CRC parole.” On these facts, we find the trial court did not abuse its discretion by denying probation and executing the previously imposed sentence with credit for time served. (See *People v. Downey* (2000) 82 Cal.App.4th 899, 909-910 [“ ‘A denial or grant of probation generally rests within the broad discretion of the trial court and will not be disturbed on appeal except on a showing that the court exercised its discretion in an arbitrary or capricious manner.’ [Citation.] A court abuses its discretion ‘whenever the court exceeds the bounds of reason, all of the circumstances being considered.’ [Citation.]”].)

Neither defendant nor his appellate counsel has identified any issue for our review. Upon our own independent review of the entire record, we agree none exists. (*People v. Wende, supra*, 25 Cal.3d 436.) Having ensured appellant has received adequate and effective appellate review, we affirm the trial court’s judgment. (*People v. Kelly, supra*, 40 Cal.4th at p. 124.)

DISPOSITION

The judgment is affirmed.

Jenkins, J.

We concur:

McGuinness, P. J.

Pollak, J.