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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.

LEOBARDO CARRILLO-ROBLES,

Defendant and Appellant.

A134269

**(Sonoma County
Super. Ct. No. MCR-387070)**

Defendant Leobardo Carrillo-Robles appeals a December 13, 2011 order reinstating his probation and ordering him to serve a year in county jail after he was found to have violated his probation. His counsel has advised that examination of the record reveals no arguable issues. (*People v. Wende* (1979) 25 Cal.3d 436.) Counsel has informed defendant in writing that a *Wende* brief was being filed and that defendant had the right to personally file a supplemental brief in this case within 30 days. No supplemental brief has been filed. No arguable error is shown.

BACKGROUND

On November 7, 2001, pursuant to a negotiated disposition, defendant pled no contest to possession of methamphetamine. (Health & Saf. Code, § 11379, subd. (a).)¹ A charge of possession of cocaine (§ 11350, subd. (a)) was dismissed. On December 20, he was placed on 36 months' probation with various conditions, including service of an eight-month county jail term.

¹ All undesignated section references are to the Health and Safety Code.

In June 2002, after defendant was deported to Mexico, the court ordered his probation summarily revoked and ordered issuance of a bench warrant in the event that, during his probation period, he returned illegally to the United States.

On November 22, 2011, the probation department filed a supplemental request to revoke defendant's probation based on his November 18 arrest for misdemeanor driving under the influence (DUI) (Veh. Code, § 23152, subd. (a)), failure to obey all laws, complete volunteer work, comply with the registration requirement (§ 11590) and report regularly to the probation department.

On December 13, 2011, defendant admitted violating his probation based on absconding from probation supervision and the DUI arrest. Defendant also agreed to a *Johnson* (*People v. Johnson* (1978) 82 Cal.App.3d 183) waiver.² The court reinstated probation and ordered defendant to serve a year in county jail in addition to any time previously served and ordered his probation to terminate unsuccessfully upon completion of the sentence. The court denied probation on the DUI case and imposed a concurrent 90-day jail term. The court properly awarded defendant 26 days of actual presentence credit and 26 days of conduct credit.

Defendant was adequately represented by counsel and no arguable error is demonstrated.

² Pursuant to a *Johnson* waiver, “a defendant . . . waive[s] custody credits . . . for jail time previously served, in order to permit a sentencing court to reinstate probation conditioned on service of an additional period of up to one year in county jail for [a] new probation violation, without running afoul of [Penal Code] section 19.2’s one-year limitation on county jail terms. . . .” (*People v. Arnold* (2004) 33 Cal.4th 294, 302.)

DISPOSITION

The sentencing order is affirmed.

SIMONS, Acting P.J.

We concur.

NEEDHAM, J.

BRUINIERS, J.