

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSEPH ALLEN BANKS,

Defendant and Appellant.

A136638

(Solano County Super. Ct. Nos.  
FCR272161, FCR276735, FCR289229)

ORDER MODIFYING OPINION  
[NO CHANGE IN JUDGMENT]

THE COURT:

It is ordered that the opinion filed herein on March 14, 2013, be modified as follows:

On page 2, under the heading **DISCUSSION**, the first three sentences are deleted.

The following is to be inserted in its place:

This court has reviewed the entire record on appeal, and the brief filed by Banks in this court on February 13, 2013. Banks argues that there is evidence that was not before the trial court that bears on his innocence of the charged violation. He says that city video cameras near the scene would show that the victim's injuries were not caused by Banks, but could have been caused by the police who he says grabbed the victim's arm when they tried to interview her about the incident. The victim also apparently was uncooperative throughout the incident and accused the officers of hurting her.

Penal Code section 1203.2, subdivision (a) permits revocation when "the court, in its judgment, has reason to believe" a person has violated a condition of probation. Courts have held that this statutory language incorporates a

preponderance of the evidence burden of proof into revocation proceedings. (*People v. Galvan* (2007) 155 Cal.App.4th 978, 981.) In other words, the court, in its discretion need only determine that a charged violation is more likely than not true. Here, an eyewitness testified that Banks punched the victim on the side of her head five or six times. The video from the Fairfield bus security camera also shows Banks grabbing the victim's arm and forcibly directing her into the street. The charge against Banks for his failure to obey all laws was adequately proven, and the evidence Banks proffers in his brief would not unequivocally demonstrate his factual innocence or show that the court abused its discretion in revoking his probation.

Banks also argues that the victim had his T-shirt when this incident occurred, and all he was trying to do was get it back from her. In his brief, he denies hitting her or otherwise using force to retrieve it. The evidence showed otherwise.

There is no change in the judgment.

DATED: \_\_\_\_\_ P.J.

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Joseph Allen Banks appeals from a judgment and sentence to state prison imposed following a determination that he violated probation in three cases for his failure to obey all laws. His court-appointed counsel has filed a brief requesting our independent review of the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436, in order to determine whether there are any arguable grounds for appeal. We conclude there are no issues that warrant review and affirm.

**BACKGROUND**

At the time of his arrest on the charges leading to his revocation of probation and sentence to prison, Banks was on probation in three cases in Solano County as a result of no contest pleas entered to two charges in 2010, and another in 2012. In case no. 272161, he entered a no contest plea to a single felony count of false imprisonment in violation of Penal Code section 236. Other charges were dismissed. In case no. 276735, he entered a no contest plea to a single count of possession of a controlled substance in violation of Health and Safety Code section 11377, subdivision (a). Again, all other charges were dismissed. His guilty pleas and waiver of rights in each case appear to have been

knowledgeable and voluntary, and there was a factual basis for each plea. In each case the court suspended imposition of sentence when it ordered Banks to formal probation.

In case no. 289229, Banks entered a no contest plea to a single count of possession of a firearm by a person previously convicted of a felony in violation of Penal Code section 12021, subdivision (a)(1). Other charges were dismissed. The plea also served as a basis for Banks's admission to the revocation of probation in the two previous cases. His guilty plea and waiver of rights appear to have been knowledgeable and voluntary, and there was a factual basis for the plea. The court again ordered Banks to formal probation with imposition of sentence suspended. His probation was reinstated in case nos. 272161 and 276735.

Then, on April 18, 2012, a citizen driving along an Antioch street saw Banks punch a girl pushing a baby in a stroller five or six times on the right side of her head. A city bus driver also saw Banks grab the woman by the arm and force her across the street. The bus driver's observation was also captured on a bus security camera. Banks was charged with violating probation in each of the three cases and, following a contested hearing, was found to have violated his probation for his failure to obey all laws.

The court imposed a prison sentence in each of the three cases. In case no. 289229, the court imposed the middle term sentence of two years. In case no. 276735, the court imposed an eight-month consecutive sentence consisting of one-third of the middle term sentence. In case no. 272161, the court also imposed an eight-month consecutive sentence, for a total prison term of three years and four months. The court properly awarded Banks presentence credits in light of his time in custody and waiver in one of the cases, and imposed restitution and parole revocation restitution fines.

### **DISCUSSION**

This court has reviewed the entire record on appeal. His counsel advises us that Banks has been informed of his right to file a supplemental brief. He has not done so. There are no issues that require further briefing.

**DISPOSITION**

The judgment is affirmed.

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Siggins, J.

We concur:

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McGuinness, P.J.

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Jenkins, J.