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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

WILLIAM McCLAIN,

Defendant and Appellant.

A138578

(Lake County
Super. Ct. No. CR925315)

Defendant William McClain was convicted in 2011 of possession of methamphetamine, and was placed on probation. In 2013 defendant admitted violating his probation. The trial court denied his request that he be reinstated on probation and sentenced him to the midterm of two years on the underlying conviction, doubled, based upon his prior serious felony conviction.

Defendant appealed, and his counsel has filed a brief under *People v. Wende* (1979) 25 Cal.3d 436, asking us to independently examine the record to determine if there are any arguable issues that require briefing. Counsel also declares that defendant was advised of his right to file a supplemental brief, and he has elected not to do so.

We have conducted that review, conclude that there are no arguable issues, and affirm.

The facts of defendant's original offense (taken from the probation report) are that early in the morning of October 9, 2010 (approximately 5:45 a.m.) Clearlake police officers stopped defendant for riding a bicycle with no headlamp and failing to stop at a stop sign. Defendant gave permission to the officers to search his person, and inside

defendant's left side front pant pocket they found a glass smoking pipe containing residue and a clear plastic bag containing what was later determined to be 1.3 grams of methamphetamine.

The officers arrested defendant, informed him of his *Miranda* rights, and transported him to the police department, where defendant gave a recorded statement. He admitted ownership of the pipe and possession of the methamphetamine. However, he denied that the methamphetamine was his, stating that he was transporting it for another person.

On January 23, 2011, the District Attorney of Lake County filed a complaint charging defendant with three offenses occurring on October 9, 2010: count I, violation of Health and Safety Code section 11379, subdivision (a), transportation of methamphetamine; count II, violation of Health and Safety Code section 11377, subdivision (a), possession of methamphetamine; and count III, violation of Health and Safety Code section 11364, possession of drug paraphernalia, a misdemeanor. The complaint also alleged that defendant had two prior serious felony convictions, including 1991 and 1999 convictions for violations of Penal Code section 459.

On April 5, 2011, the matter came on for plea, and the court first expressed its appreciation to defendant's counsel for the "thoroughness and accuracy on these plea forms." Defendant pled no contest to count II, violation of Health and Safety Code section 11377, subdivision (a). Defendant also admitted he suffered a prior conviction for violation of Penal Code section 459, first degree burglary, a felony. Defendant's plea was made in contemplation that he was eligible for probation under Proposition 36. (Pen. Code § 1210.1) Defendant expressly agreed that at sentencing counts I and III would be dismissed and that "no *Romero* motion will be made at sentencing"¹ and understood that the maximum term of imprisonment could be six years.

On May 3, 2011, the court suspended imposition of sentence and placed defendant on probation for a period of three years, subject to various conditions of probation.

¹ *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497.

On November 7, 2012, the probation officer filed his report and affidavit alleging that defendant had failed to comply with the terms of his probation in that he had failed to submit monthly reports as directed, failed to participate in programs of counseling as directed, and used methamphetamine.

On March 19, 2013, defendant admitted he violated probation as alleged and the court referred the matter to probation for preparation of a supplemental sentencing report and recommendation. Meanwhile, defendant submitted a *Romero* motion and a statement in mitigation, later withdrawing the *Romero* motion at the time of sentencing based upon his earlier agreement.

A probation violation hearing was held on April 29, 2013, at the conclusion of which the court found that defendant: (1) had methamphetamine on or about November 8, 2011, in violation of the condition that he not use any type of illegal drug or controlled substance, and (2) had failed to attend a drug and alcohol counseling program as directed and was discharged as unsuccessful from the program on July 12, 2011. The court determined that defendant had violated his probation, denied his request that he be reinstated on probation, and sentenced him to the midterm of two years on the Health and Safety Code section 11377, subdivision (a) conviction, doubled based on his prior serious felony conviction. The court advised defendant he would be entitled to up to 20 percent conduct credits during his time in state prison; awarded credit for one actual day in custody; ordered payment of a stayed violation of probation fine in the amount of \$200; and advised defendant that upon his release he would be on postrelease community supervision for three years.

Appellant filed a timely notice of appeal.

Because defendant did not appeal from either of the orders admitting him to probation, our review can take cognizance only of potential issues or errors that occurred thereafter. (*People v. Senior* (1995) 33 Cal.App. 4th 531, 535.)

The revocation hearing complied with the due process and procedural requirements enunciated in *People v. Vickers* (1972) 8 Cal.3d 451. Defendant was represented at all times by competent counsel. The trial court's decision to revoke

probation is supported by substantial evidence. (*People v. O'Connell* (2003) 107 Cal.App.4th 1062, 1066.) The trial court did not abuse its discretion in denying defendant's request for another grant of probation. The court did not impose an unauthorized sentence. And the custody credits awarded and the fines assessed were appropriate.

The judgment of conviction is affirmed.

Richman, J.

We concur:

Haerle, Acting P.J.

Brick, J.*

* Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.