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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.

DALE DUANE COOPER,

Defendant and Appellant.

A139185

(Lake County  
Super. Ct. Nos. CR932221, CR932232)

Appointed counsel for defendant Dale Duane Cooper asks this court for an independent review of the record in accordance with *People v. Wende* (1979) 25 Cal.3d 436. Counsel also declares that she advised defendant that he may personally file a supplemental brief, but he has not done so.

The sparse record before us shows that defendant was charged in separate criminal complaints with four felony counts, all involving methamphetamine and all committed while he was on bail. The only description of the offenses is the following in the probation officer's report:

"In CR-932232, on April 9, 2013, the defendant was a passenger in a vehicle which was pulled over for expired registration tags. During the stop, it was found the defendant had multiple bench warrants for his arrest. During a search of the vehicle incident to his arrest, deputies located a bag containing 0.7 grams of methamphetamine where the defendant was seated. An additional bag containing 0.3 grams of methamphetamine was also located in the vehicle.

“In CR-932221, on February 20, 2013, the defendant met an undercover special agent from the California Department of Justice for a drug transaction. During the transaction, the defendant provided 0.7 grams of methamphetamine in exchange for \$200.00 in US currency.”

On the day scheduled for a preliminary examination, defendant entered guilty pleas to possession of methamphetamine for purposes of sale (Health & Saf. Code, § 11378) in CR932221, and possession of methamphetamine (Health & Saf. Code, § 11377, sub. (a)) in CR932232. All other counts and the enhancement allegations were dismissed, but with waivers that they could be considered at the time of sentencing in accordance with *People v. Harvey* (1979) 25 Cal.3d 754. In addition, a number of misdemeanor complaints, and two probation revocation petitions, were also dismissed.

At the sentencing hearing, defendant testified that he has been using drugs for 36 of his 48 years, “did Prop. 36 in San Francisco,” but had never been in a residential drug treatment program. He asked to be admitted to probation to permit him to complete a program lasting at least a year. Defendant’s counsel advised the court that a specified program “would accept Mr. Cooper if he was available.” Defendant told the court he was willing to forfeit any custody credits “if I don’t succeed.”

The prosecutor opposed granting defendant probation because “he’s been given many opportunities to get this treatment that he’s requesting today.” Moreover, “He was given Prop. 36 for . . . two separate cases. And both were terminated as unsuccessful.”

The trial court denied probation as “inappropriate here” in light of prior convictions that “are numerous and increasing in seriousness,” and defendant’s poor prior performance on probation. The court followed the recommendations of the probation officer and, finding “no circumstances in mitigation,” sentenced defendant to state prison for an aggregate term of three years and eight months.

We have reviewed the entire record as required by *People v. Wende, supra*, 25 Cal.3d 436, 441-442. We find no arguably meritorious issues on which to request briefing.

The scope of reviewable issues on appeal after a guilty plea is restricted to matters based on constitutional, jurisdictional, or other grounds going to the legality of the proceedings leading to the plea; guilt or innocence are not included. (*People DeVaughn* (1977) 18 Cal.3d 889, 894-896.)

Defendant was at all times represented by competent counsel who safeguarded defendant's interests.

The change of defendant's plea complied with the formalities required by *Boykin v. Alabama* (1969) 395 U.S. 238 and *In re Tahl* (1969) 1 Cal.3d 122. Defendant was advised of the consequences of the change of pleas as required by *In re Yurko* (1974) 10 Cal.3d 857. There was an adequate factual basis for the changed pleas.

The trial court did not abuse its discretion in denying probation, or in imposing the upper term of three years for the possession for sale count. No part of the aggregate sentence was illegal.

Defendant's custody and conduct credits were correctly calculated in the manner required by Penal Code sections 4019 and 2933.1.

The judgment of conviction is affirmed.

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Richman, J.

We concur:

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Kline, P.J.

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Brick, J.\*

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