

NOT TO BE PUBLISHED IN OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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.

JAMES ITSUKI McCLARY,

Defendant and Appellant.

A140913

(Solano County
Super. Ct. No. FCR303958)

After finding that appellant James Itsuki McClary had violated the terms of his parole, the trial court revoked his parole and sentenced him to 180 days in jail with credit for time served of 46 days. Appellant's appellate counsel has briefed no issues and asks us to independently review the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). As required by *People v. Kelly* (2006) 40 Cal.4th 106, 124, we affirmatively note appellate counsel has informed appellant of his right to file a supplemental brief and he has not filed such a brief. We have examined the entire record in accordance with *Wende*. Because we find no issues that require further briefing, we affirm the order of December 6, 2013.

On February 14, 2007, appellant was sentenced to an aggregate term of six years in state prison after being convicted of violating Penal Code sections 136.1, subdivision (b) (preventing or dissuading a witness or victim from attending or giving testimony) and 138 (bribing or receiving bribe by witness or potential witness not to attend trial). He was released on parole supervision on December 12, 2009.

On November 21, 2013, the district attorney filed a petition seeking to revoke appellant's parole based on allegations of failure to report to the Richmond parole unit and failure to comply with a parole requirement that he participate in continuous electronic monitoring, i.e., Global Positioning System (GPS) monitoring.

On December 6, 2013, the trial court held a contested hearing on the parole revocation petition. Richmond Parole Agent Marc Cruise testified that when he first received the case in May 2013, appellant was in jail on unrelated charges. On September 5, 2013, appellant was released on bail and required to report to the parole unit in Richmond, but he failed to do so. Cruise also testified that on February 11, 2011, appellant signed a document indicating that for his gang involvement as an "addendum to his special conditions of parole" he was required to "participate in continuous electronic monitoring, . . . Global positioning system, GPS technology."¹ Appellant had complied with the GPS monitoring requirement for a period of time, but had not done so since his release from jail in September 2013. Appellant testified that for parole reporting he was "attached to the Fairfield unit, not the Richmond unit." However, he conceded that after his release from jail in September 2013, he had not reported to either the Fairfield or Richmond parole unit. He further asserted he believed the GPS monitoring requirement had been lifted by a prior parole agent after appellant had participated in "a program, pulled . . . sixty days clean," with "no violations," and spoke at a law enforcement academy about gangs. However, appellant admitted that after his release from jail in September 2013, he never confirmed with either the Fairfield or Richmond parole unit whether or not he was required to still comply with the GPS monitoring requirement, he never signed any new conditions of parole that eliminated the GPS monitoring

¹ Cruise noted the parole document signed by appellant incorrectly indicated that the reason for the GPS monitoring was a conviction for a past sex-related offense. However, the parole officer confirmed that a parole agent can order a parolee to participate in GPS monitoring requirement due to gang affiliation, and had appellant reported the error, the parole unit would have amended the parole condition to reflect that the GPS monitoring was required for gang involvement.

requirement, and he was never given anything in writing that stated he did not have to comply with the GPS monitoring requirement.

The trial court found appellant had violated the terms of his parole by failing to report and failing to participate in the GPS program. The court revoked appellant's parole and directed him to serve 180 days in jail with credit for time served of 46 days. Upon appellant's release from custody, he was ordered to report to the Fairfield parole unit within 48 hours of his release, and all other terms of parole would be reinstated.

We agree with appellate counsel that there are no issues warranting further briefing. The record supports the trial court's finding that appellant violated the terms of his parole. The record does not otherwise reflect any error or abuse of discretion in the disposition.

DISPOSITION

The order of December 6, 2013, is affirmed.

Jenkins, J.

We concur:

McGuinness, P. J.

Siggins, J.