

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

THE PEOPLE,

Plaintiff and Respondent,

v.

JAMES VALENTIN PAYAN,

Defendant and Appellant.

A141007

(San Mateo County  
Super. Ct. No. SC078458A)

Defendant James Valentin Payan appeals a judgment entered upon his plea of no contest to felony vandalism. His counsel has filed an opening brief raising no issues and asking this court for an independent review of the record. (*People v. Wende* (1979) 25 Cal.3d 436.) Defendant has been informed of his right to personally file a supplemental opening brief, but he has not done so.

Menlo Park police officers received a report that someone was breaking car windows. They found defendant, who matched a description they had been given, about three blocks away from the crime scene. A witness positively identified him. The windows of a vehicle had been smashed, and there were scratches on the hood of the vehicle. Defendant was intoxicated and refused to provide a statement.<sup>1</sup>

---

<sup>1</sup> This summary of the crime is taken from the probation officer’s report and the transcript of the preliminary hearing.

Defendant was charged with a single count of felony vandalism. (Pen. Code, § 594, subd. (b)(1).) The information also alleged a prior strike conviction (§ 1170.12, subd. (c)(1)<sup>2</sup>) and a prior prison term (§ 667.5, subd. (b)).

Pursuant to a negotiated disposition, defendant pled no contest to the vandalism charge and admitted the prior strike allegation. The prior prison term allegation was dismissed. Before entering his plea, defendant was informed of the rights he was giving up and the consequences of his plea. Under the terms of the plea, defendant was entitled to have a *Romero* motion to dismiss the prior “strike” heard at the time of sentencing. (*People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, 529–530.)

The probation officer’s report explained that defendant had suffered convictions for aggravated vehicle theft and possession of drug paraphernalia in 2006; for burglary of a dwelling, trespass of a dwelling, and harassment in 2008; for smuggling contraband into a prison in 2009; and for second degree burglary and receiving stolen property in 2010. The trial court denied defendant’s *Romero* motion, concluding, based on defendant’s criminal history, that he did not fall outside the spirit of the Three Strikes law. The court sentenced defendant to the agreed-upon term of 32 months, calculated as the low term of 16 months for vandalism (§§ 594, subd. (b)(1) & 1170, subd. (h)), doubled pursuant to section 1170.12, subd. (c)(1), and imposed fines and fees.

At the hearing on the amount of restitution, the parties stipulated that defendant would pay the victim \$2,006 in restitution.<sup>3</sup>

There are no meritorious issues to be argued.

#### **DISPOSITION**

The judgment is affirmed.

---

<sup>2</sup> All statutory references are to the Penal Code.

<sup>3</sup> The minute order incorrectly lists this amount as \$2600. Counsel for defendant informs us the trial court has corrected this error, as well as an error in failing to award defendant two days of good time/work time custody credits.

---

Rivera, J.

We concur:

---

Ruvolo, P.J.

---

Reardon, J.