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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

ROBERT MCGREGOR CALDWELL,

Defendant and Appellant.

A142093

(Sonoma County  
Super. Ct. Nos. SCR637129  
& SCR642710)

Appellant Robert McGregor Caldwell (appellant) appeals from his convictions and sentences in Sonoma County Superior Court cases SCR637129 and SCR642710.

Appellant's counsel has filed an opening brief in which no issues are raised, and asks this court for an independent review of the record as required by *People v. Wende* (1979) 25 Cal.3d 436. Counsel has declared that appellant has been notified that no issues were being raised by counsel on appeal, and that an independent review under *Wende* instead was being requested. Appellant was also advised of his right personally to file a supplemental brief raising any issues he chooses to bring to this court's attention.

In response, appellant sent an undated handwritten letter to this court, which was received on September 15, 2014, requesting that we discharge his attorney and allow him to proceed in propria persona. Subsequently, this court received a letter from appellant's mother dated October 10, 2014, requesting that counsel not be removed from the case, and enclosing a copy of this court's letter to appellant dated September 15, 2014, with handwritten notes on the printed letter that are largely unintelligible. To the extent these

notes appear to raise appellate issues, we have considered them in our review of the case under *Wende*.

We note that appellant has not obtained a certificate of probable cause, which is required by Penal Code section 1237.5 when a defendant seeks to appeal from a judgment entered following a guilty or no contest plea. A certificate is not required when the notice of appeal states, as appellant's does here, that the appeal is based upon the sentence or other matters occurring after the plea that do not affect the validity of the plea. Accordingly, we have reviewed the whole record pursuant to *People v. Wende*, *supra*, 25 Cal.3d 436 and *People v. Kelly* (2006) 40 Cal.4th 106, focusing upon grounds for appeal arising after entry of the plea. Having done so, we conclude that there is no arguable issue on appeal.

#### **Procedural and Material Factual Background of Case**

The case began and was prosecuted in Contra Costa County (Case No. 5-111567-4). On January 10, 2012, a jury convicted appellant of two counts of being a felon in possession of a firearm (Pen. Code, § 12021, subd. (a)(1)), and one count of possession of a controlled substance (Health & Saf. Code, § 11377, subd. (a)), but was unable to reach a verdict as to the remaining counts. On March 23, 2012, appellant completed a written plea waiver form and entered a no contest plea to count V of the information, charging first degree burglary (Pen. Code, §§ 459, 460, subd. (a)). Imposition of sentence was suspended, and he was placed on three years probation, with conditions, and the case was later transferred to Sonoma County and assigned Case No. SCR637129.

On November 19, 2013, appellant was charged with two drug offenses, as well as a prior strike allegation based on the Contra Costa County first degree burglary conviction. This case was assigned Sonoma County Case No. SCR642710. On January 10, 2014, appellant entered an "open" no contest plea to transporting methamphetamine (Health & Saf. Code, § 11379, subd. (a)), and admitted the strike prior in this second case. As part of the negotiated disposition, the court agreed to hear a motion to dismiss the strike pursuant to *People v. Superior Court (Romero)* (1996) 13

Cal.4th 497. He also was found to be in violation of his probation in the earlier case by virtue of his plea to the new offense.

On April 17, 2014, the court denied the motion, determined that aggravating factors outweighed the mitigating factors, and imposed the upper term of eight years (four-year upper term doubled by virtue of the strike) on the transportation of methamphetamine count in Case No. SCR642710. Consecutive one-third the midterm sentences were imposed on each charge in Case No. SCR637129, for a total consecutive term of three years four months. Accordingly, the total prison sentence imposed was eleven years four months. Fines and fees were calculated in each case. Credits of 310 actual days, and 154 conduct days, for a total of 464 days, were awarded in Case No. SCR637129. Credits of 152 actual days, and 152 conduct days, for a total of 304 days, were awarded in Case No. SCR642710.

Timely notices of appeal were filed in each case on June 6, 2014.

#### **Conclusions Based Upon Independent Record Review**

Upon our independent review of the record we conclude there are no meritorious issues to be argued, or that require further briefing on appeal.

We conclude that appellant's pleas were supported by substantial evidence, and were duly accepted upon a knowing and voluntary waiver of rights by appellant, including an acknowledgement of the consequences of entering the pleas.

We also discern no error in the sentencing. The sentencing choices made by the trial court were consistent with applicable law, supported by substantial evidence, and were well within the discretion of the trial court. The fines and penalties imposed were supported by the law and facts, and we discern no errors in calculating appellant's custody credits. At all times appellant was represented by counsel.

#### **DISPOSITION**

The judgment is affirmed.

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RUVOLO, P. J.

We concur:

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REARDON, J.

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BOLANOS, J.\*

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