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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

BRYANT KEITH MONROE,

Defendant and Appellant.

A142594

(Napa County
Super. Ct. No. CR158534)

Following defendant's admission of a probation violation, the trial court ordered the previously suspended six-year sentence executed. Defendant filed a timely appeal. As required under *People v. Kelly* (2006) 40 Cal.4th 106, 124, we affirmatively note counsel for defendant has filed a *Wende* brief (*People v. Wende* (1979) 25 Cal.3d 436) raising no arguable issue, counsel apprised defendant of his right to file a supplemental brief, and defendant did not file such a brief. Upon review of the record for potential error, we conclude no arguable issues are presented for review and affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND¹

American Canyon police pulled over a vehicle driven by defendant. The deputies determined defendant and the three other occupants were on parole. They had defendant exit the vehicle, and during the search of his person, a glass smoking pipe with burnt residue was located in his pants pocket and some methamphetamine wrapped in a knotted plastic wrap was discovered in his jacket pocket.

¹ The summary of the offense is taken from the probation report filed November 8, 2011.

Defendant entered a plea of no contest to one count of possession of a controlled substance—methamphetamine (Health & Saf. Code, § 11377, subd. (a)), and admitted three separate prior prison term enhancements (Pen. Code, § 667.5, subd. (b)) on October 11, 2011. Pursuant to a plea agreement, the court sentenced defendant to six years in state prison, execution suspended and placed him on five years of formal probation with various terms and conditions including successful completion of a residential drug treatment program.

Over the life of the case, three separate petitions to revoke his probation for failing to complete a residential treatment were filed. Defendant admitted each of these violations. Following the first two of these admissions, probation was revoked and reinstated, and probation was modified to include additional county jail time. In addition, the court reiterated its order defendant was required to successfully complete a residential treatment program.

After defendant admitted his third probation violation, the case was referred for a supplemental probation report and the matter was continued for a sentencing hearing. Defendant was able to post bail, but failed to appear for sentencing resulting in the court's issuance of a bench warrant. On April 4, 2014, the court ordered defendant returned to custody to be held without bail and referred the matter for a supplemental probation report.

At the sentencing hearing on May 22, 2014, defense counsel explained to the court it still had “authority to reinstate probation, even though this is an executed sentence situation.” After acknowledging defendant had not performed well on probation because he had not completed drug treatment as directed, counsel noted defendant had not been convicted of a new offense since he had been placed on probation in 2011. Defense counsel also stated defendant was willing to waive his custody credits in exchange for “a chance to complete treatment.” If the court was not inclined to continue defendant on probation, counsel asked the court to execute the sentence of six years, but exercise its authority under Penal Code section 1170, subdivision (d) to recall the sentence and strike the section 667.5, subdivision (b) prior prison term enhancements.

The court rejected defense counsel's requests and found defendant was not a suitable candidate for continued probation in light of the previous opportunities given him to complete treatment. It lifted the stay of execution, revoked and terminated probation, and sentenced defendant to the six-year term.

DISCUSSION

Defendant was ably represented by counsel throughout the proceedings.

The trial court exercised immense patience by reinstating probation twice, each time allowing defendant the opportunity to enter and complete a residential treatment program. When defendant, however, failed to successfully complete a program, followed by his failure to return to court, the court acted well within its discretion in revoking and terminating probation and then executing the six-year sentence.

We find no meritorious sentencing errors. The court sentenced defendant to no more than the agreed upon term of six years.

In sum, we have reviewed the record on appeal and find no issues requiring further briefing. The judgment is affirmed.

Margulies, J.

We concur:

Humes, P.J.

Dondero, J.