Filed 5/26/16 P. v. Goodrich CA1/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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. BOYD LOUIS GOODRICH, Defendant and Appellant.	A146768 (Mendocino County Super. Ct. No. SCUKCRCR13-71169)

This is an appeal from judgment after the trial court revoked the probation of defendant Boyd Louis Goodrich and ordered him to, among other things, serve three years in state prison. After defendant filed a timely notice of appeal, appellate counsel was appointed to represent him. Appointed counsel has filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*People v. Wende*), in which he raises no issue for appeal and asks this court for an independent review of the record. (See also *People v. Kelly* (2006) 40 Cal.4th 106, 124 (*People v. Kelly*).) Counsel attests that defendant was advised of his right to file a supplemental brief in a timely manner, but defendant has not exercised such right.

We have examined the entire record in accordance with *People v. Wende*. For reasons set forth below, we agree with counsel that no arguable issue exists on appeal. Accordingly, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On February 19, 2013, a criminal information was filed charging defendant with the following crimes: assault by means likely to cause great bodily harm (Pen. Code, § 245, subd (a)(4)) (count one); assault by means likely to cause great bodily harm (Pen. Code, § 245, subd. (a)(1)) (count two); and making criminal threats (Pen. Code, § 422) (count three).[1] This information was based on the following facts.[2]

On January 26, 2013, at about 3:00 p.m., the victim, Dale McAllister, was with a group of people near some railroad tracks in Ukiah when he was approached by defendant and co-defendant Lamont Jones.[3] An altercation arose once Jones realized the victim was someone with whom he had engaged in a physical fight two days earlier. As Jones began throwing punches toward the victim (one of which grazed his chin), defendant removed the knife that he was carrying in a sheath in his waistband and brandished it at the victim. This prompted the victim to pick up a wooden board to protect himself. Nonetheless, defendant advanced towards him, swung the knife in the direction of the victim's stomach, and yelled: "I'm gonna kill you!"

After defendant's knife missed him, the victim attempted to walk away, still holding the board. Defendant followed him, throwing down the knife. Jones likewise followed, encouraging defendant to continue the fight. However, by this time, the police had arrived at their location, finding the three men standing in the middle of East Gobbi Street in the midst of their argument. Jones and defendant walked away, and the police, after ordering the victim to drop his board, handcuffed him to ensure their safety. The victim then informed the officers that defendant had assaulted him with a knife.

During a subsequent police interview, defendant denied any involvement in an altercation with the victim. However, because defendant appeared intoxicated and was

---

[1] Unless otherwise stated, all statutory citations herein are to the Penal Code.

[2] These facts are derived from the probation department's presentence report dated July 5, 2013.

[3] Co-defendant Jones is not a party to this appeal. As such, he is mentioned only in passing.

heavily slurring his words, the officers had difficulty understanding him. When the officers asked defendant about the empty sheath on his belt, he said something about a knife that had been stolen from him by a women the previous night while he was sleeping, and gestured toward the railroad tracks. Shortly after defendant was arrested[4], one of the officers found a 10.5-inch fixed blade knife in the dirt about "50 yards from Gobbi Street."

Pursuant to a negotiated plea dated April 18, 2013, defendant pled no contest to assault with a deadly weapon and the trial court thereafter dismissed the remaining counts and placed defendant on probation for a period of three years, subject to various terms and conditions, including that he abstain from alcohol and marijuana, submit to drug testing, participate in a substance abuse treatment program and receive mental health counseling. In addition, the district attorney agreed to dismiss Case No. 12-23631, in which defendant was charged with multiple counts of being under the influence of alcohol (§ 647, subd. (f)), and defendant agreed to serve consecutive sentences for violating his probation in three separate misdemeanor cases.[5] Finally, defendant was ordered to pay a $40 security fee, $30 criminal conviction assessment, and $280 restitution fine, to be suspended upon successful completion of probation.

On April 1, 2015, defendant's motion to dismiss his conviction was denied.

On July 17, 2015, a petition was filed charging defendant with violating the terms of his probation by being under the influence of a controlled substance on July 14, 2015 in violation of Health and Safety Code section 11550, subdivision (a).[6]

---

[4] As defendant was being placed in the squad car, he twice told the officer: "Tell that little fucking faggot over there that I'm gonna beat his ass."

[5] In these three misdemeanor cases, defendant was ordered to serve the following terms: 120 days for being under the influence of a controlled substance (Case No. 11-17112); 30 days for driving with a suspended license (Case No. 11-20013); and 30 days for driving under the influence of alcohol (Case No. 08-85953).

[6] Defendant's probation had, by this point, been revoked and reinstated with various terms and conditions four previous times as follows: (1) at the hearing on November 1, 2013, the trial court found that defendant admitted testing positive for methamphetamine, failing to maintain contact with the probation department and failing to appear in court;

On August 5, 2015, defendant admitted the alleged probation violation and, on August 18, 2015, the trial court denied his request for reinstatement of probation and sentenced him to the middle term of three years in state prison with credit for 436 days. In addition, the trial court ordered defendant to pay the previously-suspended restitution fine of $280. This timely appeal followed.

DISCUSSION

Neither appointed counsel nor defendant has identified any issue for our review. Upon our own independent review of the record, we agree none exists. (*People v. Wende, supra,* 25 Cal.3d 436.) The trial court revoked defendant's probation after he admitted violating its terms and conditions by being under the influence of a controlled substance in violation of Health and Safety Code section 11550, subdivision (a). At this point, defendant had already had probation revoked and reinstated four times in this case between November 1, 2013 and October 23, 2014, for multiple admitted violations, including failing to maintain contact with the probation department, failing to appear in court, and testing positive for methamphetamine. (See fn. 5, *ante*.) The trial court thus ordered defendant to serve the middle term of three years in state prison with credit for 436 days, and ordered him to pay the previously-suspended restitution fine.

As this record reflects, defendant, represented at all relevant times by counsel, freely and voluntarily admitted the underlying violation in open court after being advised by the trial court of its legal consequences. While defendant's post-sentencing request for custody credits during the time he spent in a residential treatment program was denied, he did not challenge this ruling or raise any objection to his actual sentence or calculation of credit. Under these circumstances, we conclude the trial court's decision to

---

(2) at the hearing on March 26, 2014, the trial court found that defendant admitted failing to maintain contact with the probation department and failing to appear in court; (3) at the hearing on August 19, 2014, the trial court found that defendant admitted testing positive for methamphetamine, failing to attend a scheduled appointment with the probation department and failing to appear in court; and (4) at the hearing on October 23, 2014, the trial court found that defendant admitted leaving his court-ordered residential substance abuse treatment program and failing to appear in court.

revoke probation and reinstate the sentence based upon defendant's admitted violation of its terms and conditions was proper. (See *People v. Segura* (2008) 44 Cal.4th 921, 932 ["During the period of probation, the court may revoke, modify, or change its order suspending imposition or execution of the sentence, as warranted by the defendant's conduct. (§§ 1203.2, 1203.3)"].)

Thus, having ensured defendant has received adequate and effective appellate review, we affirm the trial court's judgment. (*People v. Kelly, supra,* 40 Cal.4th at pp. 117-119; *People v. Wende, supra,* 25 Cal.3d 436.)

DISPOSITION

The judgment is affirmed.

_____
Jenkins, J.

We concur:

_____
McGuiness, P. J.

_____
Pollak, J.

People v. Boyd Louis Goodrich, A146768