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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

YOHAHNES TEWOLDE

HABTEMARIAM,

Defendant and Appellant.

A147171

(Sonoma County  
Super. Ct. No. SCR645501)

By a felony complaint filed February 18, 2014, defendant Yohahnes Tewolde Habtemariam was charged with the felony offenses of possessing heroin for sale (Health & Saf. Code, § 11351) (count one) and unlawfully transporting or selling heroin (Health & Saf. Code, § 11352, subd. (a)) (count two), committed on January 13, 2014. The complaint also alleged that at the time of the commission of the offenses, defendant was released from custody on bail or his own recognition in another case. The complaint included an allegation that defendant had one prior strike conviction for burglary (Pen. Code, § 459), for which he had served a prior prison term.

On April 3, 2014, defendant pleaded no contest to possessing heroin for sale (count one) with no agreement as to sentence except that the maximum term would be six years, consisting of the middle term of three years doubled for a prior strike conviction. Defendant admitted to the allegation that he had a prior strike conviction. The court dismissed count two, and the sentence enhancements based on the out-on-bail allegation and the prior-prison-term allegation.

On June 19, 2014, after granting defendant's motion to strike the prior strike conviction (Pen. Code, § 1385; *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497), the trial court imposed but suspended execution of a sentence of the upper term of four years in state prison, and placed defendant on probation for 48 months, with conditions that included nine months in jail (with credit for time served of 253 days) and that he attend a six-month drug rehabilitation program at Turning Point and aftercare drug treatment. Defendant agreed to waive custody credit for time spent in the drug rehabilitation program. He completed the six-month drug rehabilitation program on January 3, 2015.

Thereafter, the court found defendant had violated his probation after he admitted to an allegation that he had failed to participate in an aftercare drug treatment program at TASC. The court reinstated defendant to probation with the requirement that he participate and complete a drug treatment program at Day Reporting Center. Later, the court again found defendant had violated his probation after he admitted to allegations that he had failed to participate in a drug treatment program at Day Reporting Center, and he did not report to the probation department. The court again reinstated defendant to probation with the requirement that he participate and complete a residential drug treatment program at the Jericho Project and defendant was to report to the probation department within 48 hours of his release from drug treatment. Defendant was also required to serve six months in jail and he agreed to waive credit for time served of 433 days, and to waive all custody credits while in residential drug treatment.

On July 27, 2015, a third petition for violating probation was filed alleging that defendant had been discharged from the Jericho Project program and he had thereafter failed to contact the probation department. Defendant denied the allegations and the court scheduled a hearing. On October 19, 2015, the court held a probation violation hearing. A Jericho Project senior staff member testified that on July 22, 2015, defendant reported but was not admitted to the drug treatment program. The Jericho Project senior staff member took defendant to public transportation, gave him fare for BART, told him to return to his home and report to the probation department immediately. The probation

department was informed that defendant had not been accepted by the program and that defendant had been ordered to report to the probation department. When defendant failed to report to the probation department by July 27, the probation department officer secured a warrant for defendant's arrest and defendant was arrested on August 16. The trial court found defendant had violated the terms of probation by failing to report to the probation department after he left the Jericho Project as directed by the trial court at a previous hearing and by the Jericho Project staff.

On December 3, 2015, the trial court lifted the suspended sentence and executed the previously imposed sentence of four years with credit for time served of 252 days. The court explained that it would not reinstate defendant to probation based on his history of failing to complete the drug treatment programs at TASC and the Day Reporting Center.

Defendant's appellate counsel has filed a brief asking us to independently review the record under *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). As required under *People v. Kelly* (2006) 40 Cal.4th 106, 124, we affirmatively note that appellate counsel has informed us that he has written to defendant advising him of his right to file a supplemental brief and defendant has not filed such a brief. We have independently examined the entire record in accordance with *Wende*, and agree with appellate counsel that there are no issues warranting further briefing. We see no legal error or abuse of discretion in the court's rulings or orders.

#### **DISPOSITION**

The judgment is affirmed.

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Jenkins, J.

We concur:

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McGuiness, P. J.

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Pollak, J.

*People v. Yohannes Tewolde Habtemariam*, A147171