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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.

DARYL TERRANCE JAMES,

Defendant and Appellant.

A147768

(San Mateo County  
Super. Ct. No. SC081270)

Daryl Terrance James (appellant) appeals from a judgment entered after the trial court revoked his probation and executed a previously suspended three-year prison sentence. Appellant’s counsel has filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 and requests that we conduct an independent review of the record. Appellant was informed of his right to file a supplemental brief and did not do so. Having independently reviewed the record, we conclude there are no issues that require further briefing, and shall affirm the judgment.

**FACTUAL AND PROCEDURAL BACKGROUND**

On June 27, 2014, an information was filed charging appellant with:

- (1) commercial burglary (Pen. Code, § 460, subd. (b)<sup>1</sup>);
- (2) felony acquisition or retention of another person’s access card with intent to use it fraudulently (§ 484e, subd. (d));
- (3) misdemeanor acquisition or retention of another person’s access card with the intent to transfer, use or sell it to someone other than the cardholder and with the intent to

<sup>1</sup>All further statutory references are to the Penal Code unless otherwise stated.

defraud (§ 484e, subd. (c)); (4) misdemeanor acquisition or retention of another person's identifying information with the intent to defraud (§ 530.5, subd. (c)(1)); and (5) felony acquisition or retention of the identifying information of ten or more persons with the intent to defraud (§ 530.5, subd. (c)(3)). The information further alleged appellant had two prior felony convictions (§ 1204, subd. (e)(4)) and a prior strike (§ 1170.12, subd. (c)(1)) and had served a prior prison term for the prior strike (§ 667.5, subd. (b)).

The commercial burglary count was based on an incident that occurred on May 22, 2014. That day, appellant called a Big 5 Sporting Goods store and placed a pellet gun on hold. When he came to the store to buy the pellet gun, he tried to complete the purchase with a debit card, which was declined. He then handed the store clerk a prepaid credit card and driver's license. The photograph on the license did not look like appellant, and the clerk refused to accept the credit card. Appellant paid cash for the pellet gun and left the store. The clerk contacted the police, and officers took an "information only" report.

When appellant returned to the same Big 5 store on June 2, 2014, the clerk recognized him and called the police. Appellant was arrested outside the store. An officer searched appellant and found credit cards, driver's licenses, social security and other identifying information belonging to ten victims. Appellant told the officer the cards were not stolen and that he had found them. The victims verified they did not know appellant and had not given him permission to use their cards. Most of them reported their cards had been lost or stolen, and two of them reported fraudulent activity on their cards.

On March 30, 2015, appellant pleaded no contest to count 5—felony retention of the identifying information of ten or more persons with intent to defraud (§ 530.5, subd. (c)(3))—and admitted the prior strike conviction. In exchange, it was agreed he would be sentenced to a maximum of 32 months in prison and that the trial court would consider a motion to dismiss his prior strike under *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 (*Romero* motion).

Appellant filed a *Romero* motion and asked to be placed on probation so that he could participate in the Jericho Project Drug and Alcohol Treatment Program to which he had already been accepted. The District Attorney opposed the motion and asked that appellant be ordered to serve a “second strike term” in prison.

At a May 5, 2015 sentencing hearing, the trial court granted appellant’s *Romero* motion and dismissed the prior strike. The court imposed the aggravated three-year prison term but stayed execution of that sentence and placed appellant on probation for five years. It ordered appellant to serve one year in county jail but made the jail term modifiable to entry and completion of the residential treatment program at Delancey Street. The court advised appellant he had to complete the Delancey Street program, which could be longer than two years, and that he could not leave without the approval of both the program director and his probation officer. Appellant waived all past credits for days served up to the date of sentencing as well as future credits for days spent in the Delancey Street program if he did not complete that program.

On May 21, 2015, the probation officer filed an Affidavit of Probation Violation and Motion for Issuance of Bench Warrant, alleging appellant had violated two probation terms by leaving the Delancey Street program on May 17, 2015, without the permission of the program director and the probation officer and by failing to complete his one-year jail sentence. Noting that appellant’s whereabouts were unknown, the probation officer asked that a bench warrant be issued for appellant’s arrest.

Appellant was arrested in San Francisco on July 14, 2015. On September 15, 2015, the probation officer filed an Amended Affidavit of Probation Violation alleging the same two violations as previously alleged, and adding a third allegation that appellant had failed to obey all laws because he was arrested by San Francisco police for four new offenses, and was in custody at the San Francisco Jail. Appellant was transferred to the San Mateo County Jail on November 10, 2015.

On January 29, 2016, the trial court conducted a probation violation hearing and heard testimony from the probation officer and from appellant regarding the allegation that appellant left Delancey Street without permission. The probation officer testified she

was familiar with appellant because she had prepared the Probation Department's Pre-sentence report filed May 5, 2015 and had interviewed him before making her recommendations. She testified that shortly after she learned appellant was placed on probation and ordered to serve a year in county jail modifiable to Delancey Street, she received a call from Delancey Street that appellant had walked out two days after entering the program. This information was verified and confirmed when she received a letter from Tony Lobato at Delancey Street stating appellant became a resident of Delancey Street on May 15, 2015, and left on May 17, 2015, without completing the program. She viewed this as a blatant disregard of the opportunity appellant had been given by the sentencing court, and believed it was appropriate to revoke his probation.

Appellant testified that "it was like a blessing come true" when he first arrived at Delancey Street. When the program allowed him one initial phone call, he called his parents and learned his grandmother had passed away. He became unable to "contain any of what [the Delancey Street program was] trying to throw at me." He just wanted to be with his family at that time, so he left the program and went straight to his mother's house. When he got there, his mother said it was a bad decision for him to leave and said she wanted him to return to Delancey Street. Appellant thought about doing this, but instead resumed using drugs to cover up the hurt. He appreciated that the judge had given him the chance to go to Delancey Street and said he understood that since he did not complete the program he would be sentenced to prison.

The trial court found "beyond a reasonable doubt" that appellant had violated his probation by leaving Delancey Street after just two days. The court revoked his probation and executed the suspended three-year prison sentence. The court awarded appellant 161 days of pre-sentence credits consisting of 81 actual day credits and 80 conduct credits.

#### **DISCUSSION**

Appellant's counsel has filed a brief pursuant to *People v. Wende, supra*, 25 Cal.3d 436, and asks this court to independently review the entire record to determine if it contains any issues which would, if resolved favorably to the appellant, result in

reversal or modification. We have examined the entire record and have found no reasonably arguable appellate issue, and we are satisfied that counsel has fully complied with her responsibilities. (*People v. Kelly* (2006) 40 Cal.4th 106, 109–110; *People v. Wende, supra*, 25 Cal.3d at p. 441.)

**DISPOSITION**

The judgment is affirmed.

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McGuiness, P.J.

We concur:

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Pollak, J.

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Siggins, J.

A147768