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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.

DAVEEA WHITMIRE,

Defendant and Appellant.

A147861

(City & County of San Francisco  
Super. Ct. No. 12028389)

Defendant Daveea Whitmire appeals after the trial court revoked and reinstated his probation for an additional three years, along with a 90-day jail term. Defendant’s attorney has filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436, requesting our independent review of the record. Defendant was informed of his right to file a supplemental brief, but has not done so. We find no arguable issue and shall affirm.

**Background**

On May 15, 2013, defendant was placed on unsupervised court probation for a period of three years following his no contest pleas to misdemeanor possession of a controlled substance (Health & Saf. Code, § 11350, subd. (b)) and battery (Pen. Code, § 242). As a condition of probation, defendant was ordered to “obey all laws.”

On March 19, 2014, defendant was charged by complaint with one count of misdemeanor battery. A motion to revoke defendant’s probation was filed the same day. Defendant’s probation was administratively revoked and the matter was ordered to be heard concurrently with the pending battery charges.

A jury trial was conducted on the pending battery charges in January 2016. At trial, the victim testified that at approximately 1:30 a.m. on March 18, 2014, she and defendant exchanged insults while standing outside a bar on Haight Street. Immediately thereafter, defendant grabbed her hair, threw her to the ground and punched her in the face. Defendant denied hitting the victim. He claimed that she bumped into him and then insulted him. When she began poking him in his chest, he knocked her hand away. Immediately thereafter, he was grabbed from behind, thrown on the ground and beaten. The jury deadlocked and a mistrial was declared.

Before submitting on the probation matter, both the prosecution and defendant were given the opportunity to submit additional evidence, but both declined to do so. The court “having heard the evidence at trial” found “that the People have proven by a preponderance of the evidence that the defendant . . . did commit a violation of his probation.” The court reinstated probation on the terms and conditions already in place, but added a probation condition imposing a nine-month county jail term.

Defendant filed a timely notice of appeal.<sup>1</sup>

### **Discussion**

The victim’s testimony establishes a violation of probation by a preponderance of the evidence. (*People v. Rodriguez* (1990) 51 Cal.3d 437, 441.) The court did not abuse its discretion in reinstating probation with the additional county jail condition. (*People v. Downey* (2000) 82 Cal.App.4th 899, 909.)

Defendant was provided effective assistance of counsel throughout the proceedings.

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<sup>1</sup> While the appeal was pending, the parties entered into a negotiated disposition of the pending criminal charges whereby defendant entered a no-contest plea to the misdemeanor battery charge in exchange for a 90-day time-served county jail sentence. As part of the negotiated disposition, defendant also stipulated to a modification of his probation to include a stayed county jail term of one year and a requirement that he complete a 90-day program at the Third Baptist Church.

**Disposition**

The order revoking and reinstating probation is affirmed.

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Pollak, J.

We concur:

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McGuinness, P. J.

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Siggins, J.