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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Shasta)

THE PEOPLE, Plaintiff and Respondent, v. JOHN ARLAN GODOWN, Defendant and Appellant.	C067037 (Super. Ct. No. 08F5874)

Appointed counsel for defendant John Arlan Godown asked this court to review the record to determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436 (*Wende*).) We find no arguable error and no entitlement to additional presentence credit. We will affirm the judgment.

I

On July 16, 2008, Redding police officers learned defendant was in possession of a substantial amount of methamphetamine and

had changed his address. He was on parole at the time. Officers went to defendant's new residence and arrested him. Officers then searched the residence and found four 1-ounce bags of methamphetamine, a glass pipe of the type used to smoke methamphetamine, and a gram scale.

Following a jury trial, defendant was convicted of possession of a controlled substance. (Health & Saf. Code, § 11377.) Defendant admitted seven prior prison term allegations (Pen. Code, §667.5, subd. (b)) in a bifurcated proceeding. The trial court sentenced defendant to a 10-year prison term consisting of three years for the possession conviction and seven consecutive one-year terms for the prior prison term allegations. The trial court suspended execution of sentence and placed defendant on probation for three years, subject to various conditions including successful completion of a drug program through Teen Challenge.

Defendant was released to Teen Challenge in early April 2009, but he left the program on June 8, 2009 without informing the probation department of where he was going. The probation department did not know defendant's whereabouts until late October 2009 when it learned he was in Chico. The People filed a petition to revoke probation alleging defendant left Teen Challenge and absconded from supervision. Defendant admitted violating probation.

At the sentencing hearing, defendant testified that he left Teen Challenge (1) because they refused to treat his dangerously high blood pressure, and (2) so he could care for his seriously

ill wife. The trial court imposed the suspended 10-year prison term, ordered various fines and fees, and awarded 532 days of presentence credit (266 actual and 266 conduct). The trial court later amended the credit award to 292 days actual and 292 days conduct.

Defendant did not obtain a certificate of probable cause.

II

Appointed counsel filed an opening brief that sets forth the facts of the case and asks this court to review the record and determine whether there are any arguable issues on appeal. (*Wende, supra*, 25 Cal.3d 436.) Defendant was advised by counsel of the right to file a supplemental brief within 30 days of the date of filing the opening brief.

Defendant filed a supplemental brief asserting that the trial court's decision to impose the suspended term was a miscarriage of justice. Defendant again claims he left Teen Challenge because he was told his wife had a stroke and because Teen Challenge would not permit treatment for his dangerously high blood pressure. According to defendant, this should not count as a probation violation.

Defendant also states that he tested clean for drugs and found a new drug treatment program after his most recent arrest. He further claims that his counselor at Teen Challenge was unwilling to help him unless he became an evangelist like the counselor. Finally, defendant argues that since he has found another residential treatment program after leaving Teen Challenge, "Why would it matter if it wasn't Teen Challenge?"

Defendant appears to conclude that the trial court should have placed him on probation rather than executing the previously suspended prison term.

"The trial court enjoys broad discretion in determining whether a defendant is suitable for probation." (*People v. Lai* (2006) 138 Cal.App.4th 1227, 1256.) "To establish abuse, the defendant must show that, under the circumstances, the denial of probation was arbitrary or capricious. [Citations.] A decision denying probation will be reversed only on a showing of abuse of discretion. [Citation.]" (*Id*. at p. 1257.)

Defendant was found with four ounces of methamphetamine and his extensive criminal record includes seven prior prison terms and 11 prior felony convictions. While these aggravating circumstances could justify imposing an extensive prison term, the trial court instead granted probation and put defendant in a residential drug treatment program. Defendant nonetheless quickly left the program and was not located until four months later. Even if defendant's concerns with Teen Challenge and his wife's health are accurate, his departure from the program without communicating with the probation department was unacceptable. Given defendant's violation of probation, his extensive criminal record and the quantity of drugs found in his possession, the trial court did not abuse its discretion in imposing the previously suspended prison term.

Having undertaken an examination of the entire record, we find no arguable error that would result in a disposition more favorable to defendant.

DISPOSITION

The judgment is affirmed.

MAURO, J.

We concur:

HULL, Acting P. J.

BUTZ, J.