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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

SUSAN ELALINE OGBURN,

Defendant and Appellant.

C067312

(Super. Ct. No.
09F03895)

This appeal comes to us pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*).

Defendant Susan Elaline Ogburn was charged by information with voluntary manslaughter (count one; Pen. Code, § 192, subd. (a); undesignated statutory references are to the Penal Code) and discharging a firearm in a grossly negligent manner which could result in injury and death (count two; § 246.3). As to count one, it was alleged that defendant personally used a

firearm in the commission of the offense. (§§ 1203.06, subd. (a)(1), 12022.5, subd. (a)(1).)

After originally pleading not guilty and denying the allegation, defendant entered a new plea of no contest to count one, with the remaining charge and allegation dismissed and a waiver of credit for time served up to the date of the plea change.

The prosecutor stated the factual basis for defendant's plea as follows: "[A]t approximately 2:20 in the morning on the 21st of March of 2009, there was a large disturbance in an apartment complex involving a large number of people fighting. One of the people who was being beaten up during the course of that was a person by the name of [A.C.]. The defendant's daughter . . . came to his rescue. So did the victim in this case The defendant retrieved a .22 caliber handgun and fired multiple shots. One of those shots struck and killed [the victim]." Defense counsel stipulated to these facts, but added that defendant fired into the air.

The trial court sentenced defendant to three years in state prison (the low term). The court imposed a \$200 restitution fine (§ 1202.4, subd. (b)) and a suspended \$200 restitution fine (§ 1202.45); the court also imposed victim restitution in the amount of \$8,084.94 (§ 1202.4, subd. (f)). The court awarded 93 days of presentence custody credit (63 days of actual credit and 30 days of conduct credit). Defendant is not entitled to additional credit under section 4019 because she was convicted of a violent felony. (§ 1192.7, subd. (c)(1).)

We appointed counsel to represent defendant on appeal. Counsel filed an opening brief that sets forth the facts of the case and requests 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 of the opening brief. More than 30 days elapsed, and we received no communication from defendant. Having undertaken an examination of the entire record, we find no arguable error that would result in a disposition more favorable to defendant.

However, we have found a discrepancy in the record which requires remand. The trial court originally ordered victim restitution in the amount of \$7,548.26, the figure shown in the abstract of judgment. At a subsequent hearing, the court amended the amount to \$8,084.94, and that figure is given in a memorandum from the court to the Department of Revenue Recovery. But no new abstract of judgment was prepared. Therefore, the matter must be remanded to the trial court with directions to prepare a corrected abstract of judgment stating the correct amount of victim restitution.

DISPOSITION

The judgment is affirmed. The matter is remanded to the trial court with directions to prepare a corrected abstract of

judgment and to furnish a certified copy of the corrected abstract to the Department of Corrections and Rehabilitation.

_____ HULL _____, Acting P. J.

We concur:

_____ BUTZ _____, J.

_____ MAURO _____, J.