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

THE PEOPLE,

Plaintiff and Respondent,

v.

JONATHAN DANIEL MANCIAS,

Defendant and Appellant.

C068370

(Super. Ct.
Nos. SF115460A,
SF115617B)

Appointed counsel for defendant Jonathan Daniel Mancias 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*).) Having reviewed the record as required by *Wende*, we conclude defendant received an unauthorized concurrent sentence and remand the matter for resentencing.

FACTUAL AND PROCEDURAL BACKGROUND

Defendant was in custody on July 14, 2010. While being transported by an officer from jail to an offsite work area, defendant got out of the van and ran away. He was charged in case No. SF115460A with escape while felony charges are pending.

(Pen. Code, § 4532, subd. (b)(1).)¹ It was further alleged that defendant had a prior strike conviction. (§ 1170.12.)

On August 19, 2010, officers responded to a call regarding a residential burglary. Defendant was seen fleeing the scene and arrested shortly thereafter. Defendant told officers he had been homeless since escaping work detail six weeks earlier and had decided to burglarize the house to get some money. He was in the process of looking for food in the refrigerator when officers arrived. He was charged in case No. SF115617B with residential burglary (§ 459). It was also alleged that defendant had a prior strike conviction and a prior serious felony conviction. (§§ 1170.12, 667, subd. (a).)

On February 23, 2011, defendant pled guilty to the charges in both cases. The trial court sentenced him to an aggregate term of 13 years in state prison, as follows: the middle term of four years, doubled to eight years, for the burglary; a consecutive five years for the prior serious felony; and a concurrent one-third middle term of one year four months for the escape. Restitution fines of \$220 were ordered on each case, as well as \$40 court security fees and \$30 criminal conviction assessments. Defendant was awarded 250 days of actual time and 250 days of conduct credit for a total of 500 days of custody credit.

Defendant appeals.

¹ Undesignated statutory references are to the Penal Code.

DISCUSSION

Appointed counsel filed an opening brief that sets forth the facts of the case and asked 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 have received no communication from defendant.

We have reviewed the record and determined the matter must be remanded for resentencing because defendant received an unauthorized concurrent sentence for his escape conviction.

Defendant was convicted for escape under section 4532, subdivision (b)(1). Section 4532, subdivision (b)(1), expressly provides that it is "punishable by imprisonment in the state prison for 16 months, two years, or three years, *to be served consecutively*, or in a county jail not to exceed one year." (Italics added.) Thus, defendant's concurrent sentence is unauthorized. Accordingly, we remand for resentencing. (*People v. Rodriguez* (2009) 47 Cal.4th 501, 509 [if correction of sentencing error may affect trial court's discretionary sentencing decisions, appropriate remedy is reversal and remand].)

Additionally, as a matter for clarification on remand, we note that the abstracts of judgment are confusing. The trial court clerk prepared two abstracts of judgment -- one for each case -- indicating that the sentence on case No. SF115460A was to run concurrently to that in case No. SF115617B. Each

abstract reflected the prison time and fines ordered on the corresponding case. Defendant's custody credits, which totaled 500 days, are reflected on both abstracts of judgment, with no indication that the 500 days is to be counted only once for the entire sentence. Upon resentencing, the abstracts of judgment need to be clarified, such as by indicating on the abstract of judgment for case No. SF115460A that the custody credits are reflected on the abstract for case No. SF115617B.

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

DISPOSITION

The judgment is reversed and the matter is remanded for resentencing.

_____ HOCH _____, J.

We concur:

_____ RAYE _____, P. J.

_____ MAURO _____, J.