

NOT TO BE PUBLISHED

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Shasta)

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THE PEOPLE,

Plaintiff and Respondent,

v.

BILL VERNON WEBB,

Defendant and Appellant.

C068380

(Super. Ct. No.  
11F1645)

Appointed counsel for defendant Bill Vernon Webb 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.

In March 2011, two men in a green Ford Taurus attempted to sell suspected stolen property to a parole agent.<sup>1</sup> The agent saw that the backseat of the car appeared to be full of items. The parole agent identified defendant as the person who approached her to sell the property. An officer was dispatched to recover the Taurus, which had been reported stolen.

Defendant stated he had been released from prison a couple of weeks earlier and had been using methamphetamine every day since his release. He admitted driving the Taurus and attempting to sell the stolen property to the parole agent, but he denied knowing that either the car or the property was stolen.

Defendant was charged with receiving stolen property (Pen. Code, § 496, subd. (a)),<sup>2</sup> receiving a stolen vehicle (§ 496d, subd. (a)), unlawful driving of a vehicle (Veh. Code, § 10851, subd. (a)), and possession of burglary tools (§ 466). It was further alleged that defendant had served two prior prison terms. (§ 667.5, subd. (b).) The parties reached a plea agreement under which defendant pleaded no contest to unlawful driving of a vehicle and admitted two prior prison term

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<sup>1</sup> The factual basis for the plea is contained in police reports 11-14787, 11-15423 and 11-15413. Although these reports are not contained in our record on appeal, they are summarized in the probation report.

<sup>2</sup> Undesignated statutory references are to the Penal Code.

enhancements for an agreed maximum sentence of five years. The remaining charges were dismissed with a *Harvey* waiver.<sup>3</sup>

During the plea colloquy, defendant expressed his understanding of the plea agreement and said that he read and understood all the advisements in the plea form. The trial court noted that defendant was presumptively ineligible for probation, and defense counsel indicated he and defendant had discussed that point.

Defense counsel asked the trial court to delay judgment and sentencing so that defendant could participate in the Teen Challenge drug rehabilitation program. Defense counsel proposed that defendant be placed on probation if he succeeded in the program. Evidence was presented that defendant had been accepted into the program, and defendant testified that his extensive criminal record was all drug related and he wanted a chance to complete a drug program.

The trial court denied defendant's requests. It concluded that defendant failed to overcome the presumption of ineligibility for probation, and it determined that in light of defendant's criminal history, which included stalking and assaults, placing him in an unlocked facility would present too great a risk to the community.

The trial court sentenced defendant to five years in prison, consisting of the aggravated term of three years for

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<sup>3</sup> *People v. Harvey* (1979) 25 Cal.3d 754.

unlawful driving of a vehicle, plus one year for each prior prison term allegation. The trial court imposed various fines and fees, including a restitution fund fine of \$1,000, and awarded defendant 160 days of presentence credit (80 actual and 80 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 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.

Defendant filed a supplemental brief claiming his plea agreement included a drug program and a suspended sentence. He claimed his defense counsel advised him to initial the plea waiver form, which indicated he was not eligible for probation, explaining it was "just formalities." Defendant asserted that when the trial court again advised defendant he was not eligible for probation, defense counsel again said "just formalities." He contends it is unjust for him to get "5 years instead of 3" because he asked for help with his drug problem.

To the extent defendant is claiming he received ineffective assistance of counsel based on his allegations that defense counsel misrepresented the terms of the plea agreement and told him the advisements by the trial court were just formalities, his arguments rely on matters not reflected in the record on

appeal. “[O]ur review on direct appeal is limited to the appellate record.’ [Citation.] ‘[B]ecause defendant’s claim is dependent upon evidence and matters not reflected in the record on appeal, we decline to consider it . . . .’ [Citation.]” (*People v. Jenkins* (2000) 22 Cal.4th 900, 952.)

To the extent defendant is claiming the trial court abused its discretion in sentencing him to five years rather than three years, we disagree. Defendant was not sentenced to a term of five years because he sought drug treatment. Defendant was given the aggravated term because he was on parole at the time the offense was committed, and “his previous performances on probation and/or parole have been unsatisfactory . . . .” These are appropriate circumstances in aggravation. (Cal. Rules of Court, rule 4.421(b).)

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.

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MAURO, J.

We concur:

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HULL, Acting P. J.

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BUTZ, J.