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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sutter)

THE PEOPLE,

Plaintiff and Respondent,

v.

ANDREW DOUGLAS GLEN BALL,

Defendant and Appellant.

C068398

(Super. Ct. No.
CRF093149)

This case comes to us pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*).¹ Having reviewed the record as required by *Wende*, we affirm the judgment.

¹ 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 of the opening brief. More than 30 days elapsed, and we received no communication from defendant.

We provide the following brief description of the facts and procedural history of the case. (See *People v. Kelly* (2006) 40 Cal.4th 106, 110, 124.)

On December 20, 2009, defendant's mother contacted law enforcement after discovering her Sam's Club Discover card was missing from her purse. When she called the credit card company to report her card missing, she was advised a hold had been placed on the card after a \$494 purchase had been attempted at Wal-Mart. A subsequent \$100 purchase had also been attempted, and two additional fraudulent purchases had been made earlier that month. The total amount in fraudulent purchases was \$1,502.63.

On December 22, 2010, a parole agent was at defendant's mother's residence, where defendant lived. The parole agent found the stolen credit card in defendant's pants pocket, along with Wal-Mart receipts dated the days of the fraudulent purchases. Defendant admitted he had taken the card but claimed he used it only to gain access into Sam's Club, where he used cash to buy a Christmas gift, a set of Christmas ornaments, for his mother. He claimed a friend had taken the card from him and made the fraudulent purchases. No Christmas ornaments were found in defendant's mother's residence. DVD's matching those on the Wal-Mart receipts for the fraudulent purchases were found in defendant's room. Wal-Mart surveillance photos identified defendant as the individual using the stolen credit card. Defendant's mother believed defendant was purchasing merchandise to trade for methamphetamine to support his addiction.

Defendant was charged with fraudulent use of an access card with a prior theft conviction (Pen. Code, §§ 484g, 666),² second degree burglary (§ 459), and possession of stolen property (§ 496, subd. (a)). Defendant pleaded no contest to fraudulent use of an access card with a prior theft conviction, and the remaining counts were dismissed with a *Harvey* waiver.³ It was also agreed that defendant would not be initially sent to state prison but, instead, be placed on probation and ordered to serve a year in county jail, with the additional proviso that he could be released early from county jail to enter into a residential drug treatment program with the probation department's approval.

On March 12, 2010, the trial court placed defendant on three years' formal probation, in accordance with the terms of the plea agreement, and ordered him into drug treatment. Defendant was also ordered to serve one year in county jail and was given credit for 144 days for time served. The custody credits were subsequently corrected to reflect a total of 120 days. On April 7, 2010, defendant withdrew his request for drug court.

On September 14, 2010, the probation officer filed a declaration stating defendant had violated his probation by (1) testing positive for methamphetamine, (2) failing to attend substance abuse counseling, (3) failing to contact the probation

² Further undesignated statutory references are to the Penal Code.

³ *People v. Harvey* (1979) 25 Cal.3d 754 (*Harvey*).

officer as directed, and (4) failing to report to the probation officer as directed. The trial court issued an order revoking defendant's probation.

On October 1, 2010, defendant admitted he violated probation by submitting a urine sample that tested positive for methamphetamine. Probation was reinstated on the condition that he enroll in, attend, and complete a six-month residential treatment program in San Francisco with the Salvation Army.

On November 13, 2010, defendant was discharged from the Salvation Army residential treatment program for theft and leaving the program without permission, after he and another individual used an ATM card that did not belong to either of them and did not return to the program until the following day. Defendant did not report his discharge from the program to his probation officer until November 17, 2010. Defendant was thereafter accepted into the Jordan's Crossing Ministries rehabilitation program for a one-year commitment. However, on March 28, 2011, defendant was discharged from that program for theft as well. Defendant then refused to provide a urine sample upon request. Two days later, he tested positive for methamphetamine.

On April 11, 2011, the probation officer filed a declaration reporting that defendant had tested positive for methamphetamine and had failed to complete the residential treatment program. The trial court revoked defendant's probation.

On May 9, 2011, defendant admitted both probation violations. On June 6, 2011, the trial court sentenced defendant to the upper term of three years in state prison. The trial court also ordered defendant pay \$1,502.63 in victim restitution, a \$200 restitution fine, a \$200 probation revocation fine, and a stayed \$200 parole revocation fine. Defendant was awarded 265 actual days and 264 conduct days, for a total of 529 days of custody credit.

Defendant appeals.

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.

RAYE, P. J.

We concur:

MURRAY, J.

DUARTE, J.