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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Shasta)

THE PEOPLE,

Plaintiff and Respondent,

v.

DAVID JOHN SCHAEFFER,

Defendant and Appellant.

C068448

(Super. Ct. Nos.
10F1752, 10F3185)

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 such communication from defendant.

Defendant David John Schaeffer was charged in case No. 10F1752 ("1752") with possession of methamphetamine for sale (count 1), possession of methamphetamine while armed with a loaded firearm (count 2), possession of marijuana for sale (count 3), possession of a firearm by a convicted felon (count 4), possession of ammunition by a convicted felon (count 5), and misdemeanor possession of paraphernalia (count 6). It was further alleged that defendant had a prior conviction for possession of a controlled substance for sale and had served three prior prison terms. The facts underlying these charges are not contained in the record.

Defendant was charged in case No. 10F3185 ("3185") with possession of methamphetamine for sale (count 1) and maintaining a place for selling or using a controlled substance (count 2). It was also alleged that defendant had a prior conviction for possession of a controlled substance for sale and had served three prior prison terms. The facts underlying these charges are not contained in the record.

On March 14, 2011, defendant entered a plea in both cases. He pleaded no contest to counts 1 and 2 in case No. 1752, and admitted the prior controlled substance allegation and the three prior prison terms. He also pleaded no contest to count 1 in case No. 3185. The remaining counts and allegations were dismissed. In exchange for his plea, it was agreed that if he appeared at sentencing, the three prior prison term allegations would be dismissed and he would be sentenced to seven years four months in state prison. If he failed to appear at sentencing,

he would be sentenced to up to 11 years four months. Sentencing was scheduled for May 10, 2011, at 8:30 a.m.

Defendant failed to appear at the May 10, 2011, sentencing hearing. He appeared with counsel on May 16, 2011, and a hearing was set and then continued to June 9, 2011, for the court to determine whether his failure to appear was willful and without good cause.

At the hearing, defense counsel attested that "after hours" on May 9, 2011, defendant had left a message with her answering service "reporting a serious burn." On the date of the hearing, he called her office and told the secretary he had gone to the hospital because he had a "seriously infected" burn. Over the next several days, counsel and defendant left messages for each other regarding setting a new court date for sentencing.

Defendant testified that he was at "Mercy Medical" in the emergency room at the time of the scheduled 8:30 a.m. sentencing hearing. He testified that the day before the hearing, he had suffered a burn on his leg while he was hooking up a propane tank. He described his leg as swollen and infected. He further testified that the doctors had wanted to cut off his ankle monitor but he refused, saying he would get into trouble. He told doctors to call Matt Williams at "house arrest, the HEC program there at Probation."

Medical records indicated that defendant was a "Walk in" patient the morning of May 10, 2011. He was seen in triage at 8:38 a.m. with respect to a second-degree burn on his lower leg, which defendant reported had occurred three days prior. At

8:45 a.m., medical staff called Matt Williams regarding the ankle monitor. Williams told staff to cut off the monitor and have defendant go directly to Williams's office afterward. The "full thickness burn" to defendant's leg was approximately 4 centimeters by 3 centimeters in size. Defendant was debrided, bandaged, administered medications for pain and nausea, given an antibiotic prescription, and discharged at 11:47 a.m. Defendant did not report to Williams. He claimed he was distraught and sick, went to a friend's house, and passed out.

On May 15, 2011, a police officer found defendant's car parked at a local motel. Another officer learned defendant had checked into the motel under an assumed name. Officers knocked loudly on defendant's motel room door and hailed him by name for about five minutes. They also brought a K-9 officer and had the dog bark for a couple of minutes. The officers demanded defendant exit the room and informed him they had an arrest warrant. When defendant did not respond, one of the officers left to obtain the search warrant.

Approximately an hour later, while officers (including the K-9) remained on guard, a man reported that defendant had called him and said he was "going to give himself up." Officers called out to defendant from outside the room door, and after about five minutes, defendant came out. Defendant was handcuffed and taken to jail.

After the hearing, the trial court found defendant's failure to appear at sentencing was without good cause. Thereafter, the trial court sentenced defendant to 11 years

four months as follows: in case No. 1752, the aggravated term of four years for possession of methamphetamine while armed with a loaded firearm (count 2), plus one-third the middle term (eight months) for possession of methamphetamine for sale (count 1), three years for the prior controlled substance enhancement, and three one-year terms for the prior prison terms; and in case No. 3185, one-third the middle term (eight months) for possession of methamphetamine for sale (count 1). Various fines and fees were imposed, and defendant was awarded 464 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:

MAURO, J.

HOCH, J.