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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sutter)

THE PEOPLE,

Plaintiff and Respondent,

v.

ZAYDOC ZEKE BRATTON III,

Defendant and Appellant.

C069012

(Super. Ct. No.
CRF110527)

Defendant Zaydoc Zeke Bratton III pleaded no contest to driving under the influence and driving with a suspended license and he admitted three prior convictions for driving under the influence. The court sentenced him to the upper term of three years in prison.

Defendant's ensuing appeal is subject to the principles of *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*) and *People v. Kelly* (2006) 40 Cal.4th 106, 110. In accordance with the latter, we

will provide a summary of the offense and the proceedings in the trial court.

In March 2011, Officer Wolfe was dispatched in Yuba City to the scene of a report of a vehicle matching a stolen vehicle.¹ When he arrived, he found the car parked with the right rear passenger tire on the curb. Defendant was the only person in the vehicle. Defendant did not comply with the officer's demands to put his arms outside the driver's window; the officer ordered him out of the car. Once defendant got out of the car, he was unsteady on his feet, unable to keep his arms lifted and talking loudly to himself. There was a strong odor of alcoholic beverage, his eyes were bloodshot and watery and his speech was slurred. There was an open pint-sized bottle of vodka in the car that was about a quarter full. Subsequent blood-alcohol testing revealed defendant had a blood-alcohol level of .28 percent. Defendant had three prior convictions for driving under the influence and his driving privileges had been suspended.

Defendant was charged with driving under the influence of alcohol after having been convicted within 10 years of three or more violations (Veh. Code, §§ 23152, subd. (a), 23550; undesignated statutory references are to the Vehicle Code) and driving with a blood-alcohol level of .08 percent or more, after having been convicted within 10 years of three or more separate

¹ The facts are taken from the preliminary hearing transcript, which served as the stipulated factual basis for the plea.

violations (§§ 23152, subd. (a), 23550), unlawful driving or taking of a vehicle (§ 10851) and driving with a suspended license. (§ 14601.1, subd. (a).) The parties reached a plea agreement under which defendant pleaded no contest to driving with a blood-alcohol level of .08 percent or more, after having had three prior convictions and driving with a suspended license for an agreed maximum sentence of three years. The remaining charges were dismissed.

Defense counsel argued for probation and requested defendant be allowed to go into long-term residential care. The court concluded defendant was statutorily ineligible for probation and did not find this was an unusual case. The court also found the circumstances in aggravation outweighed the circumstances in mitigation. Defendant was denied probation and sentenced to the upper term of three years. He was granted 132 days of actual custody credit and 132 days of conduct credit. Various fines and fees were imposed.

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 have elapsed, and we have 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.

DISPOSITION

The judgment is affirmed.

_____ HULL _____, Acting P. J.

We concur:

_____ BUTZ _____, J.

_____ MAURO _____, J.