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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

KATHRYN JESSICA SPIAK,

Defendant and Appellant.

C069120

(Super. Ct. No. 10F08051)

Defendant Kathryn Jessica Spiak entered a negotiated plea of no contest to second degree murder and admitted a knife-use allegation. The trial court sentenced her to 16 years to life in state prison in accordance with the plea.

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.

On December 8, 2010, an argument between defendant and her boyfriend, Jeremy Jones, escalated into a physical altercation. Defendant stabbed Jones twice in the chest with a knife and he died.

Defendant entered a negotiated plea of no contest to second degree murder (Pen. Code, § 187, subd. (a)) and admitted a knife-use allegation (*id.*, § 12022, subd. (b)(1)) in exchange for a state prison sentence of 16 years to life, that is, 15 years to life for the murder and a consecutive one-year term for use of a knife. The court sentenced defendant accordingly. Defendant was awarded 198 days of actual credit. (*id.*, § 2933.2.)

Defendant appeals. The court granted defendant's request for a certificate of probable cause. (Pen. Code, § 1237.5.)

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.

We note one error in the court's award of presentence credit. According to the probation department record, defendant was in custody from December 8, 2010, through her sentencing on June 24, 2011, a total of 199 days. The amended abstract of

judgment at item 14 gives defendant credit for 198 days. We will direct the trial court to amend the abstract to award the additional one day of credit.

We also have found a clerical error in the amended abstract of judgment that erroneously reflects victim restitution in the amount of \$749.11. The court ordered victim restitution payable to the Victims of Violent Crime program in the amount of \$7,491.11. We will order the abstract corrected accordingly.

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 trial court is directed to prepare an amended and corrected abstract of judgment reflecting victim restitution in the amount of \$7,491.11 and 199 days of actual presentence credit and to forward a certified copy to the Department of Corrections and Rehabilitation. As modified and corrected, the judgment is affirmed.

BUTZ, J.

We concur:

HULL, Acting P. J.

MAURO, J.