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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**THIRD APPELLATE DISTRICT**

**(Tehama)**

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THE PEOPLE,

Plaintiff and Respondent,

v.

JOSEPH PATRICK FLEHARTY,

Defendant and Appellant.

C069165

(Super. Ct. No. NCR77079)

Defendant Joseph Patrick Fleharty entered a no contest plea to driving with a blood-alcohol level of 0.08 percent or higher and causing injury and admitted he personally inflicted great bodily injury on an elderly person. The trial court sentenced him to eight years in state prison and suspended execution of the sentence, placing defendant on eight years of formal probation. Thereafter, defendant was found in violation of his probation and the trial court ordered execution of the previously suspended prison sentence.

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, 124. In accordance with the latter, we will provide a summary of the offense and the proceedings in the trial court.

On June 27, 2009, an officer with the California Highway Patrol responded to a report of a traffic collision involving injury. At the scene, he found a car with major front-end damage and an overturned pickup truck with the driver trapped inside. The driver of the truck, a 70-year-old man, was extracted from the vehicle and taken to the hospital by ambulance and helicopter. His injuries included crushed vertebrae in his neck and back, and broken ribs. His accumulated medical bills exceeded \$300,000.

Witnesses reported that the driver of the car, later identified as defendant, was intoxicated and had fled the scene on foot. Defendant was located walking along the highway. He appeared extremely intoxicated and insisted on standing up, against the officer's directive to sit down. When the officer attempted to handcuff him, defendant tried to run away. Defendant was restrained, handcuffed and returned to the scene of the collision.

Defendant was distraught when the officer told him the driver of the truck had been injured. He admitted he had been "partying," consumed "8 to 9 beers," and had "drank too much" when he decided to go home. Defendant performed poorly

on a series of field sobriety tests and was arrested. A subsequent blood sample taken from defendant revealed a blood-alcohol level of 0.27 percent.

A subsequent collision investigation determined that defendant had caused the collision by driving his car at a high rate of speed and hitting the rear of the pickup truck, causing it to roll over.

Defendant was ultimately charged with driving under the influence and causing injury (Veh. Code, § 23153, subd. (a)), driving with a blood-alcohol level of 0.08 percent or higher and causing injury (*id.*, § 23153, subd. (b)), and leaving the scene of an accident (*id.*, § 20001, subd. (a)). In connection with each of these felonies, it was further alleged defendant had caused great bodily injury to an elderly person (Pen. Code, § 12022.7, subd. (c)). Defendant was also charged with misdemeanor resisting a peace officer (Pen. Code, § 148, subd. (a)(1)) and misdemeanor driving with a suspended or revoked license (Veh. Code, § 14601.5, subd. (a)). Defendant committed these offenses a mere two and one-half weeks after he had been placed on summary probation for misdemeanor driving with a blood-alcohol level of 0.08 percent or higher on June 9, 2009.

On November 23, 2009, defendant pleaded no contest to driving with a blood-alcohol level of 0.08 percent or higher and causing injury (Veh. Code, § 23153, subd. (b)) and admitted he personally inflicted great bodily injury on an elderly person

(Pen. Code, § 12022.7, subd. (c))). The remaining charges were dismissed.

Defendant was sentenced on January 11, 2010. The trial court imposed the upper term of three years for the offense and an additional five years for the enhancement for a total of eight years in state prison. The trial court then suspended execution of sentence and placed defendant on eight years of formal probation. As conditions of probation, defendant was ordered to serve 365 days in jail with a waiver of credit for time served to date, complete an alcohol treatment program, and pay specified fines and fees.

On November 5, 2010, a petition for revocation of probation was filed, alleging defendant had been dismissed from his alcohol treatment program prior to completion. A bench warrant was issued for defendant's arrest.

Defendant was arrested in Montana on February 11, 2011. He admitted violating his probation and, on July 13, 2011, the trial court ordered execution of the previously suspended eight-year prison sentence. Thereafter, in response to appellate counsel's written requests, the trial court modified the judgment to correct an unauthorized fine and corrected an error in the custody credits to reflect a total of 407 days of custody credit.

Defendant appeals. We appointed appellate counsel for defendant. Counsel has filed an opening brief setting forth the facts of the case and asking us to review the record to

determine whether there were any arguable issues on appeal. (*Wende, supra*, 25 Cal.3d 436.) Counsel has also advised defendant of the right to file a supplemental brief within 30 days of the date of filing the opening brief. More than 30 days have elapsed, and we have not received any 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.

\_\_\_\_\_ BUTZ \_\_\_\_\_, J.

We concur:

\_\_\_\_\_ BLEASE \_\_\_\_\_, Acting P. J.

\_\_\_\_\_ NICHOLSON \_\_\_\_\_, J.