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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

TOBY WADE,

Defendant and Appellant.

C069167

(Super. Ct. Nos.
93F00347 & 10F07613)

Appointed counsel for defendant Toby Wade asked this court to review the record to determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436 (*Wende*)). We find no arguable error and no entitlement to additional presentence credit. We will affirm the judgment.

I

Defendant was convicted in 1994 of second degree murder. As part of his sentence he was ordered to pay a \$10,000 restitution fine.

In 2010 defendant filed a petition for writ of habeas corpus. The habeas petition asserted that the trial court never finalized imposition of the restitution fine because it referred the matter to the office of revenue reimbursement for a determination of defendant's ability to pay the fine. The trial court granted the habeas petition and scheduled a hearing to determine defendant's ability to pay.

Defendant had been in custody for more than 17 years by the time of the hearing. He had earned \$1,100. Although he had a job in prison, he had not been paid because he did not have a pay number. Nonetheless, when the economy and state budget allow, a life prisoner's pay scale ranges from \$.09 to \$.75 per hour.

Defendant worked as a cashier prior to his incarceration. He lived with his mother, had no bank account and did not own a car. However, he received some training while incarcerated involving various office skills, including computer training, software programs, business law and business math.

Defendant is scheduled for a parole review hearing in 2012 and expects that if he is denied parole his next hearing will be in 2015. Defendant indicated he has no job prospects if paroled.

Following the hearing, the trial court ordered defendant to pay a restitution fine of \$5,000.

II

Appointed 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.

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.

MAURO, J.

We concur:

BLEASE, Acting P. J.

ROBIE, J.