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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Butte)

THE PEOPLE,

Plaintiff and Respondent,

v.

DANIEL LEVI CARRELL,

Defendant and Appellant.

C069269

(Super. Ct. No. CM028684)

This case comes to us pursuant to *People v. Wende* (1979) 25 Cal.3d 436.¹ 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. (*People v. 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.

We provide the following brief description of the facts and procedural history of the case. (See *People v. Kelly* (2006) 40 Cal.4th 106, 110, 124.)

FACTUAL AND PROCEDURAL BACKGROUND

In October 2007, defendant Daniel Levi Carrell lost control of his car, which rolled down an embankment and came to rest against some trees. Several passengers emerged from the car. One passenger was bleeding from an eight-inch laceration on his arm. A witness passing by the accident scene transported the injured passenger and the two female passengers to a hospital. The witness drove defendant and the remaining passengers to a local store. Defendant returned to the accident scene and drove home in his car. When police contacted him in his bedroom four hours after the incident, defendant had bloodshot eyes, slurred speech, and a strong odor of alcohol on his breath. He had difficulty standing. Several opened and partially consumed cans and bottles were found in the room. Between 50 and 100 empty beer cans were strewn about the room. A preliminary alcohol screening test revealed a blood-alcohol content of .167 percent.

Defendant claimed he had consumed alcohol after he returned home. However, the witness had noticed a strong odor of alcohol on defendant and had observed him acting as though

More than 30 days have elapsed, and we have received no communication from defendant.

he were intoxicated. The injured victim confirmed that defendant had been drinking and was driving erratically.

In May 2008, defendant pleaded no contest to driving under the influence (DUI) causing injury. (Veh. Code, § 23153, subd. (a).) He admitted a great bodily injury enhancement (Pen. Code, § 12022.7) and a prior DUI conviction (Veh. Code, §§ 23152, subd. (a), 23566, subds. (b) & (c)).

In September 2008, imposition of sentence was suspended and defendant was placed on probation for three years. He was ordered to pay a \$200 restitution fine (Pen. Code, § 1202.4) (a \$200 restitution fine was suspended unless probation was revoked (Pen. Code, § 1202.44)), a \$25 criminal justice fee, a \$20 court security fee (Pen. Code, § 1465.8, subd. (a)(1)), and probation and public defender fees.

Thereafter, between February 2009 and March 2011, defendant admitted four probation violations. In January 2009, he submitted a urine sample that tested positive for marijuana. In September 2009, he drove on a suspended license. In December 2009, he again submitted a urine sample that tested positive for marijuana. In March 2011, he submitted a urine sample that tested positive for alcohol. Three probation violation allegations related to the March 2011 violation were dismissed with a *Harvey* waiver.²

² *People v. Harvey* (1979) 25 Cal.3d 754.

In September 2011, the trial court denied defendant's request to reinstate probation. Defendant was sentenced to state prison for six years and was awarded 128 days' local custody credit, 92 days' state custody credit, and 33 days' conduct credit. The court confirmed the \$200 restitution fine, lifted the stay of the \$200 probation revocation restitution fine,³ and imposed and suspended a \$200 parole revocation restitution fine (\$ 1202.45). However, rather than confirm the previously imposed \$20 court security fee, the court imposed a new \$40 court security fee. The trial court also imposed a \$30 criminal conviction assessment. (Gov. Code, § 70373.)

On January 22, 2012, appellate counsel for defendant requested that the trial court reduce the \$40 court security fee to \$20 because the fee amount pursuant to the statute in effect at defendant's sentencing in May 2008 was \$20. Appellate counsel also requested that the \$30 criminal conviction assessment fee be stricken because Government Code section 70373, the statute authorizing the fee, did not become effective until January 1, 2009. The trial court issued an amended abstract of judgment on February 1, 2012, reflecting both requested corrections.

³ The trial court incorrectly stated that the probation revocation fine previously imposed and stayed was \$300, not \$200.

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 judgment is affirmed.

_____ MURRAY _____, J.

We concur:

_____ BUTZ _____, Acting P. J.

_____ DUARTE _____, J.