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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Lassen)

THE PEOPLE,

Plaintiff and Respondent,

v.

TIMOTHY GRAHAM KUHLMAN,

Defendant and Appellant.

C069478

(Super. Ct. Nos.
CR025295 & CR028777)

Appointed counsel for defendant Timothy Graham Kuhlman has 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 shall affirm the judgment.

BACKGROUND

On March 15, 2007, officers arrested defendant after he failed a field sobriety test following a traffic stop. A search of his car revealed a large plastic baggie with 21 smaller

plastic baggies containing a total of 22.9 grams of methamphetamine.

Defendant pled guilty to possession of methamphetamine for sale (Health & Saf. Code,¹ § 11378) and admitted enhancements for a prior prison term (Pen. Code, § 667.5, subd. (b)) and a prior drug-related conviction (§ 11370.2, subd. (a)) in case No. CR025295. The trial court sentenced defendant to eight years in state prison, suspended execution of sentence, and placed defendant on three years of formal probation.

On May 5, 2011, defendant transported methamphetamine. He pled guilty to transportation of methamphetamine (§ 11379, subd. (a)) and admitted an enhancement for a prior drug-related conviction (§ 11370.2, subd. (a)) in case No. CR025295. He also admitted violating his probation case No. CR025295. On September 21, 2011, the trial court sentenced defendant in both cases. It executed the previously suspended eight-year state prison term in case No. CR025295 and a concurrent five-year state prison term in case No. CR028777. The court awarded defendant 10 days of presentence credits.

Defendant subsequently moved for resentencing in case No. CR025295 based on an unauthorized sentence. On April 6, 2012, the trial court granted defendant's motion and resentenced

¹ Further undesignated statutory references are to the Health and Safety Code.

defendant to seven years in state prison.² Upon motion of appellate counsel, the trial court amended the award of presentence credits to 20 days (10 actual and 10 custody) on June 12, 2012.

Defendant appeals in both cases. The trial court denied his requests for certificates of probable cause.

DISCUSSION

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 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.

² The terms of the plea in case No. CR025295 stipulated a suspended state prison sentence of seven years, consisting of an upper term of three years for the offense, section 11378, and one year for the Penal Code section 667.5 enhancement and three years for the section 11370.2, subdivision (a) enhancement. The trial court imposed and suspended an *eight-year* term consisting of an upper term of four years for section 11378 and consecutive one- and three-year terms for the prior prison term and prior drug conviction enhancements. That sentence was also unauthorized as the upper term for violating section 11378 is three years, not four. (§ 11378; Pen. Code, § 18.)

DISPOSITION

The judgment is affirmed.

_____ DUARTE _____, J.

We concur:

_____ BLEASE _____, Acting P. J.

_____ ROBIE _____, J.