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

THE PEOPLE,

Plaintiff and Respondent,

v.

OBATAIYE AKINSANYA,

Defendant and Appellant.

C069540

(Super. Ct. No.
10F01418)

Defendant Obataiye Akinsanya pled no contest to one count of lewd and lascivious conduct with a child under 14 (Pen. Code, § 288, subd. (a))¹ and was placed on probation. Within a year, following a contested probation revocation hearing, the court found defendant violated probation. Accordingly, the court

¹ Undesignated statutory references are to the Penal Code.

revoked probation, and committed defendant to prison for three years with 500 days of credit. Defendant was also ordered to pay the previously imposed restitution fund fine of \$200.

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 offenses and the proceedings in the trial court.

Among the conditions of probation imposed following defendant's plea of no contest to committing a lewd and lascivious act against a 14-year-old, was that he was not to knowingly be in the presence of any minor or groups of minors under the age of 18 without an adult being present who had been approved by the probation officer. In November 2010, five months after his plea, defendant admitted he violated that condition of probation. Probation was revoked and reinstated on the same conditions.

In April 2011, a second violation of probation petition was filed, alleging defendant had again violated probation by being in the presence of a minor without an authorized adult. A contested hearing was held on the allegations.

Kenyetta Wells and her seven-year-old daughter lived at the same apartment complex as defendant. In April, Wells and her daughter were at the apartment's pool and defendant was outside the gate. They had a brief conversation about her daughter, and defendant asked for Wells's telephone number. She refused to give it to him. Shortly thereafter, the apartment complex

manager informed the probation office that defendant had become friends with Wells's family, including the minor child. Based on that information, probation officer Deputy Noble came to Wells's apartment and informed her of defendant's probation status and conditions, and that defendant was a registered sex offender.

Later that night, defendant came over to Wells's apartment. Wells and her daughter were on the balcony. Wells told defendant she had spoken with the probation officer and she did not want him around her or her daughter. The next morning, defendant returned to the apartment and knocked a number of times on Wells's apartment door. Wells was very frightened and called Noble. Noble responded to the apartment complex and went to defendant's apartment. Defendant adamantly denied having contact with any woman or her child in the complex or any other complex. Wells later identified defendant in a field show up.

Detective Foster assisted Noble in conducting the investigation. After the field show up, Foster was escorting defendant to the patrol car. Defendant was pulling on Foster's arm, and bumped him as they tried to go through a door. Foster thought defendant was trying to go through the door without him, so he took defendant to the ground. Foster told defendant to remain on his stomach and defendant curled into a ball on his side. Foster put all his weight on defendant to make defendant comply.

The court found defendant had violated probation by being in the presence of a minor without permission of a probation

officer and had resisted arrest. The court noted defendant had not only violated probation, but appeared to be "teeing up" a new offense. Observing this was defendant's second violation of probation, the court revoked probation and imposed the low term of three years.

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. 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.

BLEASE, Acting P. J.

We concur:

ROBIE, J.

MAURO, J.