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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

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THE PEOPLE,

Plaintiff and Respondent,

v.

ROGER STEVEN MCGOWEN,

Defendant and Appellant.

C069771

(Super. Ct. Nos.  
11F01430, 11F03224)

In January 2011, in case No. 11F03224, defendant Roger Steven McGowen knowingly and unlawfully entered an inhabited dwelling home. When defendant entered the home, he intended to commit larceny and did commit a larceny.<sup>1</sup>

In February 2011, in case No. 11F01430, defendant took and drove a 1999 Ford Explorer, the personal property of another.

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<sup>1</sup> Because the matter was resolved by plea and defendant waived referral to probation, our statement of facts is taken from the prosecutor's statement of factual basis.

Defendant did so without the owner's consent and with the intent to permanently or temporarily deprive him of that car.

On February 20, 2011, defendant willfully and unlawfully operated a motor vehicle with the intent to evade or otherwise elude a pursuing peace officer.

In September 2011 defendant pleaded no contest to first degree burglary (Pen. Code, §§ 459, 460, subd. (a)), driving or taking a vehicle (Veh. Code, § 10851, subd. (a)), and eluding a pursuing peace officer (Veh. Code, § 2800.2, subd. (a)). He admitted an October 1998 strike conviction (Pen. Code, §§ 667, subds. (b)-(i), 1170.12), an October 2000 prior prison term (Pen. Code, § 667.5, subd. (b)), and a December 2009 conviction of driving or taking a vehicle (Pen. Code, § 666.5). In exchange, three related counts and an enhancing allegation were dismissed with a *Harvey* waiver.<sup>2</sup>

Defendant was sentenced to state prison for a stipulated term of twelve years four months, consisting of eight years (twice the midterm) for burglary, two years (two-thirds the midterm) for driving a vehicle, one year four months (two-thirds the midterm) for eluding, and one year for the prior prison term. He was awarded 258 days' custody credit and 128 days' conduct credit, and ordered to pay a \$600 restitution fine (Pen. Code, § 1202.4; "\$200 restitution fine per count"); a \$600 restitution fine, suspended unless parole is revoked (Pen. Code,

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<sup>2</sup> *People v. Harvey* (1979) 25 Cal.3d 754 (*Harvey*).

§ 1202.45); a \$120 court security fee (Pen. Code, § 1465.8, subd. (a)(1); \$40 per count); and a \$90 court facilities assessment (Gov. Code, § 70373; \$30 per count).

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. (*People v. Wende* (1979) 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.

Our review of the record discloses a minor error on the abstract of judgment. The trial court imposed a "\$200 restitution fine per count; equal amount imposed and stayed unless [defendant violates] parole." Defendant pleaded to one count in case No. 11F03224 (case "A" on the abstract of judgment) and two counts in case No. 11F01430 (case "B" on the abstract). Thus, in part 9 of the abstract, the fines for "Case B" should be listed as \$400, not \$200.<sup>3</sup>

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<sup>3</sup> The error may have originated with the court's rough minutes, which indicate total restitution fines of \$400, a total security fee of \$80, and a total facilities assessment of \$60. These figures correspond to two counts of conviction, not three.

**DISPOSITION**

The judgment is affirmed. The trial court is directed to correct the abstract of judgment and to forward a certified copy thereof to the Department of Corrections and Rehabilitation.

\_\_\_\_\_ RAYE \_\_\_\_\_, P. J.

We concur:

\_\_\_\_\_ ROBIE \_\_\_\_\_, J.

\_\_\_\_\_ MURRAY \_\_\_\_\_, J.