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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Yuba)

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THE PEOPLE,  
  
Plaintiff and Respondent,  
  
v.  
  
ROBERT MICHAEL WINTEMUTE,  
  
Defendant and Appellant.

C069966  
  
(Super. Ct. No. CRF1172)

This case comes to us pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*) and *People v. Kelly* (2006) 40 Cal.4th 106, 110 (*Kelly*). Having reviewed the record as required by *Wende*, we affirm the judgment.

We provide the following brief description of the facts and procedural history of the case. (*Kelly, supra*, 40 Cal.4th at p. 124.)

Defendant was granted five years' probation in Placer County Superior Court No. 62-78565 on September 29, 2008, after pleading no contest to violating Vehicle Code section 23152, subdivision (b) (driving with a blood-alcohol level of .08 percent or greater), and admitting three prior convictions for driving under the influence (DUI) (*id.*, § 23550). The terms and conditions of probation included successfully completing an 18-month DUI program and not driving unless licensed and insured. Defendant was thereafter found in violation of probation on three occasions described *post*.

According to the probation reports, on which the trial court relied, on February 29, 2008, a Roseville police officer stopped defendant's vehicle because the license plate lamp was not functioning properly. Detecting alcohol on defendant's breath, the officer asked defendant to submit to a breath test. The field tests showed blood-alcohol levels of .115 percent and .119 percent. A subsequent intoxilyzer test showed a level of .12 percent. Defendant had been convicted of three DUI offenses from 1999 to 2001.

On December 20, 2010, defendant admitted violating his probation by failing to complete the 18-month DUI program. His probation was reinstated with directions to complete the program.

On January 10, 2011, defendant's probation was transferred to Yuba County.

On April 18, 2011, defendant admitted violating his probation by failing to complete the 18-month DUI program and by driving without a valid license. The Yuba County Superior Court reinstated his probation with an additional condition requiring defendant to serve 341 days in jail, with credit for 341 days.

On September 29, 2011, defendant admitted violating his probation by failing to complete the DUI program, failing to report a change of address, and failing to report monthly to his probation officer.

On December 5, 2011, the trial court denied further probation and sentenced defendant to a two-year term for his 2008 Vehicle Code offenses. The court reinstated the previously imposed fines and fees, including a \$200 restitution fine (Pen. Code, § 1202.4), a \$200 restitution fine, suspended unless probation is revoked (Pen. Code, § 1202.44), and a \$20 court security fee (Pen. Code, § 1465.8). The court awarded 366 days of presentence custody credits (183 actual days and 183 conduct days).

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.

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

We concur:

\_\_\_\_\_ NICHOLSON \_\_\_\_\_, Acting P. J.

\_\_\_\_\_ HULL \_\_\_\_\_, J.