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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

ROBERT JAMES ILLINGWORTH,

Defendant and Appellant.

C070067

(Super. Ct. No. 11F05513)

A jury convicted defendant Robert James Illingworth of driving under the influence (Veh. Code, § 23152, subd. (a)—count 1) and driving with a blood-alcohol level of 0.08 percent or above (Veh. Code, § 23152, subd. (b)—count 2). The jury found not true as to count 2 that defendant drove with a blood-alcohol level of 0.20 percent or above. (Veh. Code, § 23578.) In a bifurcated proceeding, the trial court found that defendant had incurred two prior DUI convictions.

The trial court sentenced defendant to a three-year state prison term (the upper term for count 1, with sentence on count 2 stayed under Penal Code section 654). The court awarded defendant 196 days of presentence custody credits (98 actual days and 98 conduct days). The court imposed a \$600 restitution fine (Pen. Code, § 1202.4, subd. (b)) and a \$600 suspended restitution fine (*id.*, § 1202.45), an \$80 court security fee (*id.*, § 1465.8, subd. (a)(1)), a \$60 court security fee (Gov. Code, § 70373), a \$50 alcohol abuse fee (Veh. Code, § 23645), a \$287.78 main jail booking fee (Gov. Code, § 29550.2), and a \$59.26 main jail classification fee (Gov. Code, § 29550.2).

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 provide a summary of the proceedings in the trial court.

A witness found defendant's truck stuck in a culvert and called the California Highway Patrol (CHP). A CHP officer, arriving about a half-hour later, found defendant inside the truck, leaning on the steering wheel with his eyes closed; the keys were in the ignition and the hood was warm. It took several knocks on the window before defendant responded. When defendant stepped out of the truck, the officer smelled alcohol coming from defendant and from inside the truck. Defendant's gait was unsteady and he had trouble walking. Based on the results of field sobriety tests, the officer determined defendant was under the influence and arrested him. An

inventory search of defendant's truck disclosed two bottles of whiskey, the contents of which were partly consumed. Defendant's subsequent blood test revealed a blood-alcohol level of 0.28 percent.¹

Defendant appeals. We appointed counsel to represent him 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.

We note, however, a clerical error on the abstract of judgment, which incorrectly states that the court security fee is imposed pursuant to a nonexistent Penal Code section 465.8, subdivision (a)(1). We will remand the matter with directions to the trial court to prepare a corrected abstract of judgment showing that this fine is imposed under Penal Code section 1465.8, subdivision (a)(1).

¹ Defense counsel argued that the prosecution had not proved defendant could not have drunk the whiskey between the time his truck went into the culvert and the time the officer arrived.

DISPOSITION

The judgment is affirmed. The matter is remanded to the trial court with directions to prepare a corrected abstract of judgment as stated above and to forward a certified copy of the corrected abstract of judgment to the Department of Corrections and Rehabilitation.

_____ BUTZ _____, J.

We concur:

_____ NICHOLSON _____, Acting P. J.

_____ MAURO _____, J.