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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT

(Butte)

THE PEOPLE,

Plaintiff and Respondent,

v.

JAMES RICHARD FEATHERSTONE,

Defendant and Appellant.

C070687

(Super. Ct. No. CM034944)

Appointed counsel for defendant James Richard Featherstone 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*)). Finding no arguable error that would result in a disposition more favorable to defendant, we will affirm the judgment.

I

Counsel stipulated that the probation report would provide the factual basis for defendant's plea. According to the probation report, a California Highway Patrol officer

was alerted that defendant displayed signs of intoxication before leaving Gold Country Casino in his sport utility vehicle. The officer observed defendant's vehicle swerve four times and conducted a traffic stop. Defendant smelled of alcohol, his speech was slurred, his face was flushed, and his eyes were red and watery. He admitted consuming three beers. Defendant failed a field sobriety test and a breath test indicated that he had a blood alcohol content of 0.18 or 0.19 percent.

Defendant pleaded no contest to driving under the influence of alcohol (Veh. Code, § 23152, subd. (a) -- count 1), and admitted seven prior prison terms, in exchange for dismissal of the remaining counts and allegations with a *Harvey*¹ waiver. The trial court denied defendant's motions to withdraw his plea and to discharge appointed counsel. (*People v. Marsden* (1970) 2 Cal.3d 118 (*Marsden*).)

The trial court sentenced defendant to 10 years in county jail (three years for driving under the influence, plus seven years for the prior prison terms), awarded defendant 434 days of presentence custody credit (217 actual days and 217 conduct days), and imposed a \$2,000 restitution fine (Pen. Code, § 1202.4, subd. (b)), a fine of \$1,747 (Pen. Code, § 672), a \$50 alcohol education fee (Veh. Code, § 23645, subd. (a)), a \$40 court operations assessment (Pen. Code, § 1465.8), a \$30 criminal conviction assessment (Gov. Code, § 70373), and a \$736 presentence investigation report fee (Pen. Code, § 1203.1b).

II

Appointed counsel filed an opening brief setting forth the facts of the case and asking 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 the opening brief.

¹ *People v. Harvey* (1979) 25 Cal.3d 754.

Defendant filed a supplemental brief stating:

“Defendant has had conflict with trial counsel Jesus Rodriguez in past cases where he was appointed counsel by Butte County. (CM030736, CM025113) *Marsden* motion was filed in the past. Defendant believes Rodriguez should never have been appointed [sic], or Rodriguez should have denied appointment due to conflict. Defendant filed in a timely manner, both a motion to withdraw plea, and a motion for substitution of counsel, because of court appointed counsel’s lack of vigorous defense which caused defendant to receive the maximum sentence allowed by law on a so[-]called plea agreement. Defendant wishes the court to see if *Missouri v. Frye* No. 10-444 cite as 566 U.S. (2012) [sic] and *Lafler v. Cooper* No. 10-209 cite as 566 U.S. (2012) [sic] are relevant to this appeal.

“Under the uniform sentencing under the equal protection grounds of the Judicial Council, why was I denied dismissal of prior prison terms due to ‘Realignment’ AB 109?”

“Defendant also feels that Butte County has waged a vendetta against him because of his filing of a federal 1983 civil rights claim against the Calif[ornia] Depart[ment] of Corrections, where Butte Co[unty] was named as co-respondent because of being housed at Butte Co[unty] Jail. The trial court appointed Jesus Rodriguez as counsel while this was being filed (2007)[.]”

“Defendant feels that there are just too many conflicts of interest that warrant a claim of ineffective assistance of counsel in this case.”

Defendant asks us to examine not only the appellate record in this case, but also a habeas corpus petition he previously filed with this court.

Defendant’s claims involving his trial counsel were largely addressed and rejected by the trial court in a hearing on defendant’s *Marsden* motion. During that hearing, defendant asserted that trial counsel had been appointed in a prior case and defendant “attempted” a *Marsden* motion but had been persuaded by the trial court to withdraw the motion because defendant had an outstanding habeas corpus petition. In defendant’s

view, that history between them should have prompted trial counsel to recuse himself or declare himself disqualified. Defendant also asserted that trial counsel failed to raise available defenses before negotiating the plea agreement with the prosecutor.

Trial counsel responded that he did not view his prior history with defendant as creating a conflict in the present case, and defendant did not indicate prior to his *Marsden* motion in the instant case that trial counsel should not take the case for that reason. Trial counsel acknowledged that he and defendant had some disagreements about this case, but he did not believe the disagreements rose to the level of a conflict of interest.

Trial counsel also explained that based on the evidence and allegations in this case, he thought the best strategy was to negotiate a plea agreement dismissing as many priors as possible.²

The trial court found that counsel had provided proper representation and there was no breakdown in the attorney-client relationship. Accordingly, the trial court denied defendant's *Marsden* motion and also denied defendant's pro se motion to withdraw his plea.

Defendant does not explain why he thinks the trial court's rulings were erroneous. We have independently reviewed the matter, however, and we find no arguable error.

Defendant claims his trial counsel was ineffective because defendant received the maximum sentence possible under the plea agreement. But a sentence within the terms of the plea agreement is not unduly harsh. Having freely accepted the benefits of the agreement negotiated for him by defense counsel -- including the dismissal of certain counts and enhancement allegations -- defendant may not now claim the agreement was unfair.

² The plea agreement involved the dismissal of one felony count, one misdemeanor count, five enhancement allegations asserting prior driving under the influence convictions, and four enhancement allegations regarding prior prison terms.

The contention that the remaining prior prison term allegations should have been stricken under realignment is incorrect. Realignment does not require elimination of the prior prison term allegations in this case. (Pen. Code, § 1170, subd. (h).) Defendant’s references to “uniform sentencing” and “equal protection” do not change our conclusion.

Defendant asserts Butte County has a vendetta against him, but the record does not show arguable error in that regard. In fact, the record on appeal does not include information regarding the federal lawsuit referenced by defendant, and it does not include any information regarding county actions in response to that lawsuit.

We decline defendant’s request that we consider his habeas corpus petition as part of this appeal. Appellate review is generally confined to matters in the appellate record. Defendant does not explain, and our independent review does not indicate, how the habeas corpus petition could assist us in resolving this appeal.

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.

MAURO, J.

We concur:

BLEASE, Acting P. J.

HULL, J.