Filed 11/29/12 P. v. Alviar CA3

NOT TO BE PUBLISHED

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THE PEOPLE, Plaintiff and Respondent, v. CHERYL ANN ALVIAR, Defendant and Appellant.	C070791 (Super. Ct. No. 11F02725)

Appointed counsel for defendant Cheryl Ann Alviar has filed an opening brief that sets forth the facts of the case and asks this court to review the record and determine whether there are any arguable issues on appeal.[1] (*People v. Wende* (1979) 25 Cal.3d 436 (*Wende*).) Finding no arguable error that would result in a disposition more favorable to defendant, we order a few corrections to the abstract and affirm the judgment.

---

[1] 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.

On April 11, 2011, defendant attempted to cash a forged check at a Bel Air grocery store and then fled the store when the check was rejected. She had also provided the clerk with a driver's license that appeared altered and did not bear her true name. When police officers stopped her, she was in possession of additional counterfeit checks in the names of several individuals and had text messages on her cell phone on the subject of the fraudulent checks.

Defendant was charged with second degree burglary (Pen. Code, § 459),[2] possession of an instrument with intent to defraud (§ 475, subd. (c)), possession falsified identification (§ 470b), and possession of an instrument with intent to complete it to defraud (§ 475, subd. (b)). It was also alleged defendant had served a prior prison term within the meaning of section 667.5, subdivision (b).

On the first day of trial, defendant requested substitution of counsel and a continuance. The request was denied by both the trial assignment judge and the trial judge. The following day, February 10, 2012, defendant pleaded no contest to possession of an instrument with intent to defraud (§ 475, subd. (c)) in exchange for a dismissal of the remaining counts and an understanding she would receive the midterm of two years. She also entered into a *Harvey* waiver[3] and expressly waived her appellate rights.

On March 23, 2012, the trial court sentenced defendant to two years, to be served locally pursuant to section 1170, subdivision (h). The trial court also ordered defendant to pay various fines and fees, including a $400 restitution fine pursuant to section 1202.4, victim restitution in an amount to be determined, and $702 for the cost of the presentence report. Defendant was awarded 25 actual days and 24 conduct days, for a total of 49 days of presentence custody credit.

Defendant appeals. She did not obtain a certificate of probable cause. (§ 1237.5.)

---

[2] Further undesignated statutory references are to the Penal Code.

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

Our review of the record reveals two errors on the abstract of judgment that require correction. As summarized above, the trial court ordered defendant to pay a $400 restitution fine pursuant to section 1202.4 and $702 for the cost of the presentence report. The abstract of judgment erroneously reflects a restitution fine in the amount of $200 and omits reference to the $702 for the cost of the presentence report. The oral pronouncement is the actual rendition of judgment. (*People v. Mitchell* (2001) 26 Cal.4th 181, 185.) When a discrepancy exists between the court's oral pronouncement of judgment and the clerk's written account in the minute order and abstract of judgment, the oral pronouncement of the sentence controls. (*Id*. at pp. 185–186.) Accordingly, we order the abstract of judgment be corrected to conform to the sentence actually imposed by the court.

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. The trial court is directed to prepare a corrected abstract of judgment in accordance with this opinion and forward a certified copy thereof to the relevant custodial and supervising authorities.

NICHOLSON, Acting P. J.

We concur:

HULL, J.

ROBIE, J.