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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Butte)

THE PEOPLE,

Plaintiff and Respondent,

v.

JONATHAN DALE JOHNS,

Defendant and Appellant.

C071406

(Super. Ct. Nos. CM032989,
CM033389, CM033904)

This is an appeal pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*).

On August 26, 2010, a probation search of Carli Smith's home at which defendant Jonathan Dale Johns was present revealed several items of stolen property including several driver's licenses, 20 cell phones, three laptop computers, Social Security cards, cameras, and methamphetamine pipes. A complaint in case number CM033904, filed August 30, 2010, charged defendant and Smith with receiving stolen property (count 1; Pen. Code, § 496, subd. (a))¹ and possession of a smoking device, a misdemeanor

¹ Undesignated statutory references are to the Penal Code.

(count 3; Health & Saf. Code, former § 11364, subd. (a); as amended by Stats. 2004, ch. 608, § 4, pp. 4785-4786). Smith was also charged with child abuse (count 2).²

On September 22, 2010, defendant failed to appear at his preliminary hearing. A complaint in case number CM032989, filed on October 19, 2010, charged defendant with failure to appear (§ 1320, subd. (b)) and alleged an on-bail or own recognizance (O.R.) enhancement (§ 12022.1).

Between September 30, 2010 and October 1, 2010, a burglary occurred at a residence and thereafter, at two department stores, defendant used a credit card which had been stolen from the residence. A complaint in case number CM033389, filed December 10, 2010, charged defendant with two counts of second degree burglary (counts 1 and 2; § 459) and two counts of theft, a misdemeanor (counts 3 and 4; § 484g) and alleged an on-bail or O.R. enhancement.

On December 29, 2010, defendant entered a guilty plea to receiving stolen property (case No. CM033904), failure to appear (case No. CM032989), and one count of second degree burglary (count 1; case No. CM033389) in exchange for dismissal of all remaining counts as well as case numbers CM033258 and CM032901 with a waiver pursuant to *People v. Harvey* (1979) 25 Cal.3d 754. The court granted probation in each case for a term of three years.

A petition for violation of probation filed in each case on April 13, 2011, alleged that defendant failed to report to the probation officer and failed to enter a residential substance abuse program. Defendant failed to appear on April 27, 2011, and a bench warrant was issued for his arrest.

² This appeal does not involve Smith.

On May 24, 2011, officers investigated a report of an attempted theft of a bicycle worth \$1,800. The male suspect, later identified as defendant, fled but the two women suspects were detained.

On July 5, 2011, defendant was sentenced in Tehama County case number NCR81903 to state prison for the upper term of three years for stealing a vehicle (§ 496d, subd. (a)).

On October 6, 2011, defendant was produced from state prison. On October 26, 2011, he entered a plea of no contest to attempted grand theft of the bicycle, a misdemeanor (§§ 664/487) in case number CM035142 and was found in violation of probation in case numbers CM033904, CM032989, and CM033389.

At sentencing on November 23, 2011, the court designated the Tehama County offense as the principal term and imposed the upper term of three years. The court then imposed a consecutive one-third the midterm, or eight months, for receiving stolen property (case No. CM033904), failure to appear (case No. CM032989), and second degree burglary (case No. CM033389). The court imposed a concurrent one-year county jail term for attempted grand theft. The total term was five years to be served in “county prison” pursuant to section 1170, subdivision (h)(2). The court found that defendant was a narcotics addict or in imminent danger of becoming a narcotics addict and ordered that defendant be committed to the California Rehabilitation Center (CRC) pursuant to Welfare and Institutions Code section 3051. Defendant executed a waiver of his rights under Welfare and Institutions Code section 3053 should he be excluded from CRC for any reason.

A letter dated January 13, 2012, from the Department of Corrections and Rehabilitation (Department) notified the court that the Department was unaware of any authority that allowed the court to change the Tehama County state prison commitment to a CRC commitment. The Department advised that the court was entitled to reconsider all sentencing choices.

On January 18, 2012, the court on its own motion set the matter for review of sentencing.

On May 17, 2012, the court adopted the terms imposed on November 23, 2011, eliminated referral to CRC, and sentenced defendant to state prison.

Defendant filed his notices of appeal on June 6, 2012.

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 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.

DISPOSITION

The judgments are affirmed.

BLEASE, Acting P. J.

We concur:

MAURO, J.

HOCH, J.