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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

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THE PEOPLE,

Plaintiff and Respondent,

v.

DOUG TUTTLE,

Defendant and Appellant.

C071999

(Super. Ct. No. 11F02988)

Appointed counsel for defendant Doug Tuttle 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*).

We will direct the trial court to correct the abstract of judgment to reflect the orally imposed fines and fees and the statutory basis for the prior prison term enhancement, Penal Code section 667.5, subdivision (b). Finding no other arguable error

that would result in a disposition more favorable to defendant, we will affirm the judgment.

## I

According to the police report (as summarized in the amended probation report), officers observed a vehicle driven by defendant run a red light. After stopping the vehicle they smelled marijuana emanating from it. A records check indicated that defendant's driver's license was suspended. Searching the vehicle, officers found approximately 3.58 grams of marijuana in a small pill container, approximately 291.02 grams of marijuana in a grocery bag, and a brown bag containing three baggies holding, respectively, 27.4 grams, 28.24 grams, and 28.30 grams of marijuana. The officers also found a fully loaded .38 revolver in the backseat of the vehicle and a BB gun resembling a firearm. Defendant admitted owning the revolver and the BB gun.

After his oral *Marsden*<sup>1</sup> motion was heard and denied, defendant pleaded no contest to being a felon in possession of a firearm (Pen. Code, former § 12021, subd. (a)(1), now § 29800, subd. (a)(1) -- count one),<sup>2</sup> and admitted enhancement allegations that he had a prior strike conviction (§§ 667, subds. (b)-(i), 1170.12) and had served a prior prison term (§ 667.5, subd. (b)), in exchange for dismissal of the remaining counts and a stipulated five-year state prison sentence (the midterm of two years doubled for the strike, plus a year for the prior prison term).

The trial court sentenced defendant to the stipulated term, awarded one day of presentence custody credit,<sup>3</sup> and ordered him to pay a \$500 restitution fine (§ 1202.4,

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<sup>1</sup> *People v. Marsden* (1970) 2 Cal.3d 118.

<sup>2</sup> Undesignated statutory references are to the Penal Code.

<sup>3</sup> Appellate counsel informally asked the trial court to order an extra day of presentence custody credit to conform to the probation report's finding that defendant had served two

subd. (b)), a \$500 parole revocation fine, suspended unless parole is revoked (§ 1202.45), a \$40 court security fee (§ 1465.8, subd. (a)(1)), a \$30 court facility fee (§ Gov. Code, § 70373), a \$287.78 main jail booking fee (Gov. Code, § 29550.2), and a \$25 administrative screening fee (Gov. Code, § 29550, subd. (c)).

## 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. More than 30 days elapsed and we received no communication from defendant.

In reviewing the record, we have determined that the abstract of judgment does not include the orally imposed \$500 restitution fine (§ 1202.4, subd. (b)) or the \$500 parole revocation fine suspended unless parole is revoked (§ 1202.45). In addition, the abstract of judgment does not identify the statutory bases for the prior prison term enhancement (§ 667.5, subd. (b)), or the orally imposed \$287.78 main jail booking fee (Gov. Code, § 29550.2) or \$30 court facility fee (Gov. Code, § 70373, which the reporter's transcript incorrectly identifies as Government Code section "703730"). We will direct the trial court to correct the abstract of judgment.

Having undertaken an examination of the entire record, we find no other arguable error that would result in a disposition more favorable to defendant.

## DISPOSITION

The judgment is affirmed. The trial court is directed to correct the abstract of judgment to include the orally imposed \$500 restitution fine (§ 1202.4, subd. (b)) and the \$500 parole revocation fine suspended unless parole is revoked (§ 1202.45). The trial

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days, not one. The trial court denied the request because the booking records showed that defendant was booked and released in a single day.

court is also directed to correct the abstract of judgment to identify the statutory bases for the prior prison term enhancement (§ 667.5, subd. (b)) and the orally imposed \$287.78 main jail booking fee (Gov. Code, § 29550.2) and \$30 court facility fee (Gov. Code, § 70373). The trial court shall forward a certified copy of the corrected abstract of judgment to the California Department of Corrections and Rehabilitation.

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MAURO, J.

We concur:

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BLEASE, Acting P. J.

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MURRAY, J.