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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Siskiyou)

THE PEOPLE,

Plaintiff and Respondent,

v.

SEDALE THREETS,

Defendant and Appellant.

C072532

(Super. Ct. No. 12997)

Appointed counsel for defendant Sedale Threets asked this court to review the record and determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436 (*Wende*)). Our review of the record discloses that the judgment must be modified to reflect a count 7 conviction for possession of a controlled substance while armed with a loaded firearm (Health & Saf. Code, § 11370.1, subd. (a)). We have also identified a clerical error in the amended abstract of judgment. Finding no other arguable error that would result in a disposition more favorable to defendant, we will

affirm the judgment as modified and direct the trial court to prepare an amended and corrected abstract of judgment.

I

Because the matter was resolved by plea, our statement of facts is taken from the probation officer's report. Simone Muro drove a car at excessive speed on an interstate highway. Defendant was a passenger in the car. A California Highway Patrol officer stopped the car and Muro consented to a search of the car. The search yielded a nine-millimeter handgun, a plastic bag containing 82.46 grams of cocaine salt, a plastic bag containing 4.96 grams of heroin, and a plastic bag containing 40 MDMA tablets plus a partial MDMA tablet.

Defendant pleaded guilty to possession of cocaine and heroin for sale (Health & Saf. Code, § 11351 -- count 4), possession of MDMA or ecstasy (Health & Saf. Code, § 11378 -- count 6), "transportation" of a controlled substance while armed with a firearm (Health & Saf. Code, § 11370.1, subd. (a) -- count 7), and possession of a firearm by a convicted felon (Pen. Code, § 29800, subd. (a)(1)¹ -- count 8). He admitted a strike allegation (§§ 667, subds. (b)-(i), 1170.12) and a prior narcotics conviction allegation (Health & Saf. Code, § 11370.2, subd. (a)).

The trial court dismissed other counts and enhancement allegations pursuant to the plea agreement, including a strike allegation to the extent it doubled the length of defendant's confinement, but not to the extent that it required a prison commitment. (§§ 667, subds. (b)-(i), 1170, subd. (h)(3).) The trial court sentenced defendant to seven years in prison, awarded him 143 days of custody credit and 142 days of conduct credit, and ordered him to pay a \$6,720 restitution fine (§ 1202.4), a \$6,720 parole revocation fine (§ 1202.45), a \$150 laboratory analysis fee (Health & Saf. Code, § 11372.5, subd.

¹ Undesignated statutory references are to the Penal Code.

(a)), a \$160 court operations assessment (§ 1465.8, subd. (a)(1)), and a \$120 court facilities assessment (Gov. Code, § 70373).

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.

Our review of the record discloses that defendant's count 7 conviction must be modified to reflect a conviction for "possession" of a controlled substance while armed with a loaded firearm. (Health & Saf. Code, § 11370.1, subd. (a).) Although the statute refers exclusively to possession, not transportation, the amended information alleged that defendant "did unlawfully possess and/or transport" ecstasy while armed with a loaded firearm. In the plea colloquy, the reference to possession was omitted and the offense was described simply as "transportation of a controlled substance with a firearm." Because the amended information gave defendant adequate notice of the possession offense and the record does not suggest that defendant transported ecstasy without also possessing it, we will modify the judgment to reflect a conviction for possession of a controlled substance while armed with a loaded firearm.

In addition, our review of the record discloses a clerical error in the amended abstract of judgment. The trial court orally ordered defendant to pay a court operations assessment (referring to it using the former name, court security fee) as recommended in paragraph six of the probation department's recommendation and orders: an assessment in the amount of \$40 per count of conviction, for a total of \$160. But the amended abstract of judgment refers to a court security fee in the amount of "\$120." We will direct the trial court to correct the amended abstract of judgment to reflect the orally imposed court operations assessment of \$160.

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 modified to reflect a count 7 conviction for possession of a controlled substance while armed with a loaded firearm. (Health & Saf. Code, § 11370.1, subd. (a).) The judgment is affirmed as modified. The trial court is directed to prepare an amended and corrected abstract of judgment reflecting the judgment as modified and reflecting the orally imposed court operations assessment of \$160. The trial court shall forward a certified copy of the amended and corrected abstract of judgment to the Department of Corrections and Rehabilitation.

_____ MAURO _____, Acting P. J.

We concur:

_____ DUARTE _____, J.

_____ HOCH _____, J.