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

THE PEOPLE,

Plaintiff and Respondent,

v.

PHILLIP ANTHONY ROMERO,

Defendant and Appellant.

C076494

(Super. Ct. No. 12F5465)

Appointed counsel for defendant Phillip Anthony Romero 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*)). After reviewing the entire record, we affirm defendant's convictions and sentence. However, we remand the matter to the trial court to impose any mandatory and discretionary fines, fees, and assessments.

Summary of Facts and Procedural History

According to the police report, on May 6, 2012, defendant broke into two different residences in an apartment complex, breaking a window in each. The residents were

home at the time. Located by law enforcement on the roof of a detached garage behind the complex while brandishing a knife, defendant said: “Help, they are going to kill me, help! They are going to shoot me.” After jumping from the roof, defendant was detained and transported to the emergency room, where he was found to be under the influence of methamphetamine.

In June 2012, an information was filed charging defendant Phillip Anthony Romero with felony vandalism (counts 1 & 2; Pen. Code, § 594, subds. (a)(2)/(b)(1))¹, brandishing a knife (count 3; § 417, subd. (a)(1)), public intoxication (count 4; § 647, subd. (f)), and trespass (count 5; § 602.5, subd. (b)). The information alleged two prior prison terms (§ 667.5, subd. (b)).

Defendant pled no contest to count 1, with the remaining counts and allegations to be dismissed (counts 2 & 4 with *Harvey*² waivers), in return for a grant of three years of probation, including 170 days in county jail. Defendant stipulated the factual basis for the plea was contained in the preliminary hearing transcript and the police report.

Defendant was granted probation in November 2012. The trial court orally ordered defendant to pay “a fine of \$100, crime prevention fund of \$10, penalty assessment of \$110, county penalty assessment of \$33, state surcharge of \$22, court construction penalty of \$55, DNA fund penalties of \$44, court operations assessment for \$40, court facilities assessment of \$30 and installment account processing fee of \$30, restitution fine of \$240, probation revocation restitution fine in the same amount, which is suspended unless parole is revoked or probation is revoked. Total amount of fines,

¹ Undesignated statutory references are to the Penal Code.

² *People v. Harvey* (1979) 25 Cal.3d 754.

fees, penalty assessments, excluding the victim restitution which has not yet been determined, \$714.” A victim restitution hearing was set.

In February 2013, after the hearing, the trial court ordered victim restitution in the amount of \$325 on count 1, and in the amount of \$1,395 on count 2 pursuant to the *Harvey* waiver.

In November 2013, defendant in propria persona sought to have his conviction on count 1 reduced to a misdemeanor because the People had failed to prove \$400 worth of damage. The trial court set the matter as a request for sentence modification and a motion pursuant to section 17, subdivision (b).

While that matter was pending, in February 2014 the probation department filed a motion to revoke defendant’s probation because he had been convicted of a new misdemeanor and had a pending felony case in San Joaquin County; he had failed to notify the department of his arrest in that county; he had been discharged from a reporting center for unexcused absences; he had tested positive for methamphetamine on one occasion and had failed to test on multiple occasions; and he had failed to make restitution.

In April 2014, the trial court denied defendant’s motion to deem his conviction on count 1 a misdemeanor. The court reasoned: Defendant made statements before he entered his plea that questioned whether the damages on count 1 would reach \$400, yet he entered the plea anyway, thus avoiding a possible five-year prison sentence. If he thought he could not lawfully be charged with a felony on count 1, his remedy was either to appeal his conviction or to file a motion to withdraw the plea. Having received the benefit of his bargain, he could not now come in a year and a half later and try to reduce the conviction to a misdemeanor. Finally, so far as the court had discretion to reduce the

conviction under section 17, subdivision (b), it declined to do so in light of defendant's prior criminal history.

In May 2014, after a hearing, the trial court found defendant had violated his probation and sentenced him to serve three years (the upper term) in county jail. The court awarded defendant 468 days of presentence custody credit (404 actual days and 64 conduct days). So far as the record shows, the court did not impose any fees, fines, or assessments. Nor did the court discuss the fines, fees, and assessments previously imposed as conditions of probation.

Analysis

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.

However, we must remand the matter to the trial court because the record does not reflect any imposition of fines, fees, or assessments when it revoked defendant's probation and sentenced him to serve a three-year county jail term, or make any order regarding the fines, fees, and assessments previously imposed as conditions of probation.

DISPOSITION

Defendant's convictions and sentence are affirmed. The matter is remanded to the trial court with directions to impose any fines, fees, and assessments that are mandatory on conviction or that the court considers warranted in the exercise of its discretion, and to

make an order disposing of the fines, fees, and assessments previously imposed as conditions of probation.

HOCH, J.

We concur:

RAYE, P. J.

DUARTE, J.