

NOT TO BE PUBLISHED

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Yuba)

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THE PEOPLE,

Plaintiff and Respondent,

v.

ALEXANDER ANDREI MARTHALER,

Defendant and Appellant.

C080043

(Super. Ct. No. CRF1524)

Appointed counsel for defendant Alexander Andrei Marthaler has filed an opening brief that sets forth the facts of the case and asks this court to review the record to determine whether there are any arguable issue on appeal. (*People v. Wende* (1979) 25 Cal.3d 436 (*Wende*)). After reviewing the entire record, we affirm the judgment.

On January 13, 2015, defendant broke into a locked Volkswagen Jetta, intending to steal the car battery and put it into another car.

Defendant entered a plea of no contest to second degree burglary (Volkswagen Jetta) (Pen. Code, § 459; count 2) in exchange for dismissal of vehicle theft (Chevrolet Impala; count 1) with a waiver pursuant to *People v. Harvey* (1979) 25 Cal.3d 754, and possession of burglary tools, a misdemeanor (count 3). The trial court granted defendant probation subject to certain terms and conditions including serving 90 days in county jail, reporting to the probation department as directed and submitting to drug testing. The trial court denied defendant's petition to reduce the second degree burglary offense to a misdemeanor. (Pen. Code, § 1170.18.)

Defendant admitted violating the terms of his probation by failing to report to the probation department, submitting samples testing positive for amphetamines, and failing to submit to subsequent drug testing. Defendant requested probation be terminated and the court impose sentence with the "minimal amount of time." The court sentenced defendant to serve the midterm of two years in county prison with credit for time served of 132 days.

Defendant appeals. He did not seek a certificate of probable cause. (Pen. Code, § 1237.5.)

Appointed counsel has 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 judgment is affirmed.

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/s/  
HOCH, J.

We concur:

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/s/  
RAYE, P. J.

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/s/  
MAURO, J.