

NOT TO BE PUBLISHED

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT**

(Yolo)

THE PEOPLE,

Plaintiff and Respondent,

v.

ROBERT LARRY JOHNSON,

Defendant and Appellant.

C080721

(Super. Ct. No. CRF 11-5244)

This appeal comes to us pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). In accordance with *People v. Kelly* (2006) 40 Cal.4th 106, 110, we provide a summary of defendant's offenses and the proceedings in the trial court.

An information filed April 20, 2012, charged defendant Robert Larry Johnson with possession for sale of methamphetamine, a felony (Health & Saf. Code, § 11378—count 1); possession of methamphetamine, a felony (Health & Saf. Code, § 11377, subd. (a)—count 2); possession of controlled substance paraphernalia, a misdemeanor (Health & Saf. Code, § 11364.1—count 3); and possession of burglary tools, a misdemeanor

(Pen. Code, § 466—count 4).¹ As to count 1, the information alleged pursuant to Health and Safety Code section 11370.2, subdivision (a) that defendant was previously convicted of violating Health and Safety Code section 11351 (felony possession or purchase for sale of controlled substances), and that during the commission of the act charged in count 1 defendant possessed for sale cocaine base, cocaine, and methamphetamine after having been previously convicted of violating Health and Safety Code section 11351. The information also alleged that defendant was previously convicted of a serious felony (Pen. Code, § 667, subds. (c), (e)(1)); that he was released from custody on bail or on his own recognizance when he committed the offense charged in count 1 (*id.*, § 12022.1, subd. (b)); and that he had suffered two prior prison terms (*id.*, § 667.5, subd. (b)).

On January 16, 2013, defendant pleaded no contest to count 2 and admitted the prior felony and prior prison term allegations, in return for the dismissal of all other counts and allegations and a stipulated sentence of five years in state prison. The parties stipulated that the preliminary hearing transcript and the motion to suppress evidence provided the factual basis for the plea.

The evidence offered at the preliminary hearing showed that on November 20, 2011, in the town of Esparto, a Yolo County Sheriff's deputy searching for a juvenile encountered defendant and three other persons, one of whom was wearing a dark hooded sweatshirt, as the juvenile had been reported wearing. Defendant was highly agitated and appeared to be under the influence of a controlled substance. Performing a pat search of defendant's person for reasons of officer safety, the deputy found a methamphetamine-smoking pipe, a loaded syringe, and a plastic bag holding seven bindles; the substance in

¹ Undesignated statutory references are to the Penal Code.

the syringe and the bindles tested positive for methamphetamine. Defendant said the methamphetamine was for personal use.

On March 28, 2013, the trial court imposed the agreed upon five-year prison sentence, consisting of two years on count 2, doubled for the prior serious felony, plus one year consecutive for the prior prison term. The court awarded defendant 989 days of presentence custody credit (495 actual days and 494 conduct days). The court imposed a \$280 restitution fee (Pen. Code, § 1202.4, subd. (b)), a \$280 suspended parole revocation restitution fee (*id.*, § 1202.45), a \$205 criminal laboratory analysis fee (Health & Saf. Code, § 11372.5), a \$615 drug program fee (Health & Saf. Code, § 11372.7, subd. (a)), a \$40 court operations assessment (Pen. Code, § 1465.8), and a \$30 criminal conviction assessment (Gov. Code, § 70373).

After being released from prison on October 17, 2014, defendant was placed on postrelease community supervision (§§ 3000.8, subd. (b), 3450). Shortly after his release, his supervision was transferred from Yolo County Probation Department to Colusa County Probation Department.²

On February 2, 2015, defendant filed a section 1170.18 motion to reclassify his felony drug possession conviction to a misdemeanor. The Yolo County Superior Court granted the motion and ordered defendant to serve a one-year parole term under the supervision of the Department of Corrections and Rehabilitation (§ 1170.18, subd. (d)).

Defendant filed a motion for reconsideration of the one-year parole term, contending that his 495 actual days of custody credits reduced his period of parole to zero. The trial court denied the motion without prejudice, pending the outcome of our Supreme Court's decision in *People v. Morales*, review granted August 26, 2015, S228030. Defendant filed a timely notice of appeal from the trial court's order.

² We grant defendant's April 18, 2016 motion to augment the record.

The Supreme Court subsequently resolved the issue whether custody credits could reduce a period of parole under section 1170.18 adversely to defendant's position. (*People v. Morales* (2016) 63 Cal.4th 399.)

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 have elapsed, and we have 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 order denying defendant's motion for reconsideration of his parole term is affirmed.

_____ BUTZ _____, J.

We concur:

_____ HULL _____, Acting P. J.

_____ MAURO _____, J.