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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Placer)

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THE PEOPLE,

Plaintiff and Respondent,

v.

JAMES THOMAS HOLBROOK,

Defendant and Appellant.

C081170

(Super. Ct. No. 62110272)

Appointed counsel for defendant James Thomas Holbrook asks 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*)). Finding no arguable error that would result in a disposition more favorable to defendant, we affirm the judgment.

We provide the following brief description of the facts and procedural history of the case. (See *People v. Kelly* (2006) 40 Cal.4th 106, 110, 124.)

On December 1, 2011, defendant pled no contest to possessing a dirk or dagger under former Penal Code section 12020, subdivision (a)(4).<sup>1</sup> He was placed on three

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<sup>1</sup> Undesignated statutory references are to the Penal Code.

years' formal probation and ordered to serve 60 days in jail, with the understanding that after a year, he could petition to reduce his conviction to a misdemeanor.

In early 2013, a petition to revoke probation was filed alleging violations of sections 211 and 496, as well as a failure to report to probation as directed. On January 9, 2013, the trial court summarily revoked probation and issued a bench warrant. Between January 31, 2013 and September 30, 2013, defendant signed five promises to appear and failed to appear each time.

Two years later, defendant signed another promise to appear and again failed to appear. This time the court ordered him not to be released without judicial review.

The people filed an amended petition to revoke probation alleging violations in 2014 of Health and Safety code section 11377, and Penal Code section 21310, as well as a failure to maintain contact with probation. On December 16, 2015, a revocation hearing was finally held. At the hearing, defendant's probation officer testified that defendant had failed to contact probation after August 6, 2012.

At the hearing, defendant demurred to the petition, arguing his probation terminated on December 11, 2014, a year before the amended petition to revoke probation was filed. The prosecution responded that the probationary period had tolled because probation was revoked in early 2013, and defendant had been on bench warrant status ever since.

The trial court denied the motion to dismiss the petition, finding defendant's multiple failures to appear, mainly, caused the delay. It further found defendant had violated his probation.

At sentencing, the court imposed a two-year middle term and suspended eight months of the term for defendant to be placed on mandatory supervision. The court also awarded 229 days of credits (115 actual, 114 conduct) and reimposed a suspended fine of \$200 (§ 1202.44).

