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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(San Joaquin)

THE PEOPLE, Plaintiff and Respondent, v. RONALD BERNARD GUTIERREZ, Defendant and Appellant.	C087270 (Super. Ct. No. MAN-CR-FDV-2017-0011677)

Appointed counsel for defendant Ronald Bernard Gutierrez filed an opening brief setting forth the facts of the case and 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.) We modify the judgment to dismiss the balance of the charging document and add two mandatory fees. Finding no other arguable error that would result in a disposition more favorable to defendant, we affirm the judgment as modified.

BACKGROUND

No factual basis was established for the plea.[1] Accordingly, the facts are taken from San Joaquin County Sheriff's report No. 17-20723.

Defendant's girlfriend, T.R., was driving a car in which defendant was riding. They got into an argument and defendant hit T.R. in the mouth. T.R. then collided the car she was driving with a semi-truck and drove off the roadway and into an open field; the car was totaled.

The People charged defendant with assault with force likely to produce great bodily injury (Pen. Code, § 245, subd. (a)(4))[2] and corporal injury to a spouse or cohabitant (§ 273.5, subd. (a)). The People further alleged defendant was previously convicted of three strike offenses and a domestic violence offense. The information was subsequently amended to include a charge for misdemeanor hit and run resulting in property damage. (Veh. Code, § 20002, subd. (a).)

Defendant pleaded no contest to misdemeanor hit and run; in exchange, the People moved to dismiss the remaining charges and allegations. The trial court sentenced defendant to six months in county jail, to be served consecutive to a four-year sentence imposed on defendant in an unrelated matter. The court ordered no fines and fees were to be paid by defendant, and no restitution; it did not dismiss the remaining counts and allegations, although dismissal is noted in the minute order.

Months later, defendant filed a motion to withdraw his plea. Defendant said he could not hear the judge during his plea hearing because the microphones were not working, and his attorney just told him to say yes. Defendant explained he suffers from

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[1] We requested and received supplemental briefing as to whether this omission was prejudicial error. We conclude that it was not. (See Pen. Code, § 1192.5; *Ballard v. Municipal Court* (1978) 84 Cal.App.3d 885, 888-892.)

[2] Undesignated statutory references are to the Penal Code.

posttraumatic stress disorder, for which he takes medication. He also has a documented "communication disability" and the medication he takes for that made him too "lax," he wanted a continuance, so he could "ween" himself off the medication. He also represented that he told his trial counsel he was having difficulty understanding the proceedings because of his medications.

The trial court denied defendant's motion.

Defendant appeals; he was granted a certificate of probable cause.

DISCUSSION

We appointed counsel to represent defendant on appeal. Counsel filed an opening brief setting forth the facts of the case and requesting that this court review the record to determine whether there are any arguable issues on appeal. (*People v. Wende*, *supra*, 25 Cal.3d 436.) Defendant was advised of his 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 have received no communication from defendant.

The trial court failed to orally dismiss the balance of the charging document because dismissal was part of the plea agreement and is noted in the minute order; we modify the judgment to do so. (§ 1260.) Further, because imposition of a court security fee (§ 1465.8, subd. (a)(1)) and the court facilities fee assessment (Gov. Code, § 70373, subd. (a)(1)) is mandatory as to each count of conviction (*People v. Sencion* (2012) 211 Cal.App.4th 480, 483-484), we modify the judgment to add a $40 court security fee and a $30 court facilities assessment. The trial court should prepare an amended minute order to reflect their addition.

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 dismiss the balance of the charging document and impose the mandatory fees. As modified, the judgment is affirmed.

/s/
Duarte, J.

We concur:

/s/
Butz, Acting P. J.

/s/
Mauro, J.