

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

EDWARD A.,

Defendant and Appellant.

D061565

(Super. Ct. No. J213597)

APPEAL from a judgment of the Superior Court of San Diego County, Polly H. Shamoan, Judge. Affirmed.

In October 2010, the fourth delinquency petition for 15-year-old Edward A. alleged two counts of rape (Pen. Code, § 261, subd. (a)(2)) with an aiding and abetting allegation (Pen. Code, § 264.1) attached to count 1. Edward was detained in juvenile hall, then released to his father on home supervision with electronic surveillance. In December, Edward admitted violating the terms of his home supervision and he was detained in juvenile hall. In January 2011, home supervision with electronic surveillance

resumed, and the petition was amended to add a gang enhancement to each count. In May, Edward entered a negotiated admission to violating the curfew condition of his probation and the court committed him to the Breaking Cycles program for a period not to exceed 365 days. On October 19, 2011, the petition was amended again by adding a third count, sexual battery (Pen. Code, § 243.4, subd. (a)). That day, Edward entered a negotiated admission to count 2 and the remaining counts and the enhancements were dismissed with a *Harvey* waiver (*People v. Harvey* (1979) 25 Cal.3d 754).

On October 27, 2011, Edward was arrested for violating probation by associating with gang members and evading the police. In November, after an evidentiary hearing, the court found Edward had violated a gang condition of his probation. In February 2012, the court committed 16-and-one-half-year-old Edward to California Department of Corrections and Rehabilitation, Division of Juvenile Justice (DJJ) for a maximum term of 10 years four months. Edward appeals. We affirm.

BACKGROUND

On February 12, 2010, Edward, "some friends of his and the victim went to a place called The Blocks . . . to do some drinking. [T]he victim was sexually assaulted[.] [O]ne of Edward's friends [had] sexual intercourse with the victim by the use of force, and Edward was there and he was acting as a lookout. [¶] . . . [¶] [The offense was committed] with force and violence and menace and fear of immediate and unlawful bodily injury and [Edward] was a participant."

Edward's probation prohibited him from associating with or being in the company of any person he knew or reasonably should have known was a member of the Barrio

Posole Locos (Posole) or any other known gang. On October 27, 2011, Oceanside Police Officer Dennis Ewing, who was with the gang suppression unit, saw six or seven Hispanic males near the handball courts in Balderamma Park, an area where the Posole gang congregated. Ewing recognized one of the males, a known Posole gang member. The males looked toward Ewing, then fled in different directions. Ewing pursued one of the males, and recognized him as Edward, whom Ewing knew from prior contacts. Ewing knew Edward was on gang unit supervision and detained him. Ewing contacted Edward's probation officer then arrested Edward for violating probation. After waiving his *Miranda* rights (*Miranda v. Arizona* (1966) 384 U.S. 436), Edward told Ewing he had been on his way to school, had seen his friends at the park and had gone to say hi to them. Edward saw Ewing and fled because he knew he was in violation of probation.

DISCUSSION

Appointed appellate counsel has filed a brief summarizing the facts and proceedings below. Counsel presents no argument for reversal, but asks this court to review the record for error as mandated by *People v. Wende* (1979) 25 Cal.3d 436. Pursuant to *Anders v. California* (1967) 386 U.S. 738, counsel lists as possible, but not arguable, issues: (1) whether there was a sufficient factual basis for the plea to the fourth petition; (2) whether the evidence was sufficient to support a finding Edward violated probation; and (3) whether the court abused its discretion by committing Edward to DJJ rather than a less restrictive placement.

We granted Edward permission to file a brief on his own behalf. He has not responded. A review of the record pursuant to *People v. Wende, supra*, 25 Cal.3d 436

and *Anders v. California, supra*, 386 U.S. 738, including the possible issues listed pursuant to *Anders v. California, supra*, 386 U.S. 738, has disclosed no reasonably arguable appellate issues. Edward has been competently represented by counsel on this appeal.

DISPOSITION

The judgment is affirmed.

McCONNELL, P. J.

WE CONCUR:

BENKE, J.

IRION, J.