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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

JASON SULLIVAN,

Defendant and Appellant.

D061856

(Super. Ct. No. SCD237848)

APPEAL from a judgment of the Superior Court of San Diego County, Dwayne K. Moring, Judge. Affirmed.

INTRODUCTION

A. *Guilty Plea*

At a change of plea hearing on January 5, 2012, Jason Sullivan — after consulting with his defense counsel, entering into a plea agreement, and initialing and signing a "Plea of Guilty/No Contest—Felony" form — waived his constitutional rights, pleaded

guilty to two counts of residential burglary (Pen. Code,¹ §§ 459, 460) as charged in counts 1 (victim: Scott Palmer) and 3 (victims: Orlando and Linda Foote), respectively, of the amended information; and, as to count 1, admitted an allegation that he had suffered a prior residential burglary conviction that constituted a strike prior (§§ 667, subds. (b)-(i), 668, 1170.12). In exchange for his guilty plea, the parties stipulated that Sullivan would be sentenced to a prison term of nine years four months, and the People would dismiss the balance of the charges and allegations set forth in the accusatory pleading.

B. Sentencing

At the April 3, 2012 sentencing hearing, the court sentenced Sullivan to the stipulated prison term of nine years four months. The court granted him 125 actual days of credit, plus 124 days of credit under section 4019, for a total of 249 days of custody credits.

The court ordered Sullivan to pay (1) a victim restitution fine (§ 1202.4, subd. (b)) in the amount of \$3,760; (2) a parole revocation restitution fine (§ 1202.45) also in the amount of \$3,760, suspended unless parole is revoked; (3) a court security fee (§ 1465.8) in the amount of \$80; (4) a criminal conviction assessment (Gov. Code, § 70373) in the amount of \$60; (5) a criminal justice administration fee (Gov. Code, § 29550.1) in the amount of \$154; and (6) a theft fine (§ 1202.5) in the amount of \$38.

¹ Undesignated statutory references will be to the Penal Code unless otherwise specified.

Pursuant to the request of the prosecution and the stipulation of defense counsel, the court ordered Sullivan to pay, subject to modification, victim restitution (§ 1202.4, subd. (f)) to Scott Palmer in the amount of \$1,947.93, Orlando Foote in the amount of \$1,400, and Grunow Construction in the amount of \$1,000.

C. Certificate of probable cause

Sullivan's appeal followed. The court granted his request for a certificate of probable cause.

FACTUAL BACKGROUND

For purposes of the change of plea hearing, Sullivan admitted in his change of plea form, as the factual basis for his guilty plea, that he "broke into an inhabited dwelling w[ith] the intent to commit a theft as to both counts." At the hearing, Sullivan clarified that he was admitting he broke into two different inhabited dwellings with the intent to commit theft.

DISCUSSION

Appointed appellate counsel has filed a brief summarizing the 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 refers to the following as possible, but not arguable, issues: (1) "Whether [Sullivan's] plea was constitutionally valid"; (2) "Whether [Sullivan] was sentenced in accordance with his guilty plea"; (3) "Whether the court's admonitions on the record were sufficient to advise [Sullivan] of his constitutional rights . . . and result[ed] in a knowing and intelligent waiver of those rights and whether a

separate admonition on his rights should have been given with respect to the strike prior that was admitted as a part of this plea"; (4) "Whether the court's grant of credits under [section] 4019 was proper when the probation officer indicated that there was a basis for probation revocation separate and distinct from the underlying offense"; (5) "Whether the amount of the court security fee (\$80) imposed under section 1465.8 is correct"; (6) "Whether the \$60 criminal conviction assessment imposed under Government Code section 70373 is correct"; (7) "Whether the theft fine (\$38) imposed under [section] 1202.5 is authorized"; (8) "Whether [the] trial court's failure to make [a] finding on ability to pay a restitution fine under section 1202.5 was waived by failure to object"; (9) "Whether [the] trial court's failure to make [a] finding on ability to pay a restitution fine under section 1202.4 was waived by failure to object"; and (10) "Whether [Sullivan] could have shown that the strike prior he admitted was not in fact a strike because the dwelling was not occupied at the time but was undergoing a remodel and whether he may raise that issue on appeal despite his plea agreement."

On September 6, 2012, we granted Sullivan 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 raised by appellate counsel has disclosed no reasonably arguable appellate issue. The record shows he was properly advised of his rights before he entered his guilty plea and admitted the strike prior allegation, he knowingly and voluntarily entered his guilty plea and admission, there is a factual basis for his plea, his plea is constitutionally valid, his credits

were calculated correctly, and the fines and assessments were properly calculated and imposed. The record also shows the court properly sentenced Sullivan, who has been adequately represented by counsel on this appeal.

DISPOSITION

The judgment is affirmed.

NARES, Acting P. J.

WE CONCUR:

O'ROURKE, J.

AARON, J.