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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

MARK ANTHONY SORROW,

Defendant and Appellant.

D061968

(Super. Ct. No. SCD227463)

APPEAL from a judgment of the Superior Court of San Diego County, Jeffrey F. Fraser, Judge. Affirmed.

I.

INTRODUCTION

Mark Anthony Sorrow pleaded guilty to one count of false imprisonment by violence, menace, fraud, or deceit (Pen. Code, §§ 236, 237, subd. (a))¹ (count 5) and one count of dissuading a witness by force or threat (§ 136, subd. (c)(1) (count 8)). Sorrow also admitted having suffered three prison priors (§§ 667.5, subd (b), 668). The trial

¹ Unless otherwise specified, all subsequent statutory references are to the Penal Code.

court sentenced Sorrow to a stipulated sentence of four years eight months in prison. We affirm.

II.

FACTUAL AND PROCEDURAL BACKGROUND

On July 14, 2011, the People charged Mark Anthony Sorrow by amended felony indictment with conspiracy to commit a crime (§182, subd. (a)(1)) (count 1), kidnapping for the purposes of committing a robbery (§ 209, subd. (b)(1)) (count 2), kidnapping (§207, subd. (a)) (count 3), assault with a firearm (§ 245, subd. (a)(2)) (count 4), false imprisonment by violence, menace, fraud or deceit (§§ 236, 237) (count 5), and dissuading a witness by force or threat (§136.1, subd. (c)(1)) (count 8). The amended indictment also alleged various firearm enhancements with respect to counts 1, 2, 3, and 5. In addition, the People alleged that Sorrow had suffered four prison priors (§§ 667.5, subd. (b), 668).

Pursuant to a plea agreement, Sorrow pleaded guilty to counts 5 and 8 and admitted having suffered three prison priors, in exchange for the dismissal of the balance of the counts and enhancement allegations and the imposition of a stipulated four-year-eight-month state prison sentence.

The trial court sentenced Sorrow to the agreed upon term: the upper term of three years on the false imprisonment count, plus an additional eight months (one-third the stated midterm of two years) on the dissuading a witness by force or threat count, plus an additional one year for one of admitted prison priors. The trial court struck the two other admitted prison priors.

Sorrow's appointed appellate counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). After counsel filed a *Wende* brief, this court granted Sorrow the opportunity to file a supplemental brief on his own behalf. Sorrow has not filed a supplemental brief.

In January 2013, while Sorrow's appeal was pending, this court issued an order that stated in relevant part:

"It appears to this court that the manner by which the trial court constructed Sorrow's sentence to implement the four-year-eight-month stipulated sentence is unauthorized. The trial court sentenced Sorrow to eight months on count 8 (Pen. Code, § 136.1, subd. (c)(1)). The court stated that the basis for the sentence on count 8 is that eight months is "one-third the mid." The midterm sentence for a violation of Penal Code section 136.1, subdivision (c)(1) is three years. It thus appears to this court that the trial court imposed an unauthorized sentence of eight months in prison on count 8 based upon the mistaken premise that the midterm sentence for a violation of Penal Code section 136.1, subdivision (c)(1) is two, rather than, three years."

In response to our order, defense counsel filed a motion to augment the record to include documents relevant to the sentencing issue raised in our January 2013 order. The documents include a July 2, 2012 Department of Corrections and Rehabilitation (Department) letter informing the trial court of the unauthorized sentence on count 8. In addition, the motion contains a July 16, 2012 sentencing minute order correcting the error that the Department identified in its letter. The order states in relevant part: "Parties stipulate the charge in count 8 will now be listed as [section] 136.1 [, subdivision]

(b)(1)].² . . . Sentence remains as previously ordered." The motion to augment also contains a new abstract of judgment, reflecting Sorrow's four-year-eight-month state prison sentence, now calculated in the following manner: the upper term of three years on the false imprisonment count (§§ 236/237, subd. (a)(1)), plus an additional eight months (one-third the midterm of two years) on the dissuading a witness count (§ 136, subd. (b)(1), plus an additional one year for the prison prior (§ 667.5, subd. (b)).³

We granted Sorrow's motion to augment and have augmented the record to include the documents attached to Sorrow's motion.

III.

DISCUSSION

A review of the record discloses no error

In his brief on appeal, Sorrow's counsel presents no argument for reversal, but asks this court to review the record for error, as mandated by *Wende, supra*, 25 Cal.3d 436. Pursuant to *Anders v. California* (1967) 386 U.S. 738 (*Anders*), counsel lists as a possible, but not arguable, issue: "Is appellant's negotiated plea in exchange for a sentence of four years and eight months constitutionally valid?"

² Section 136.1, subdivision (b)(1) specifies the offense of dissuading a witness, while section 136, subdivision (c)(1), specifies the offense of dissuading a witness by force or threat. The midterm sentence for a violation of section 136.1, subdivision (b)(1) is two years (§ 18), while, as noted in our January 2013 order, the midterm sentence for a violation of section 136.1, subdivision (c)(1) is three years.

³ Notwithstanding the existence of a pending appeal, a trial court "retains jurisdiction . . . to correct an unauthorized sentence. [Citation.]" (*People v. Nelms* (2008) 165 Cal.App.4th 1465, 1472.)

A review of the record pursuant to *Wende, supra*, 25 Cal.3d 436 and *Anders, supra*, 386 U.S. 738, including the possible issue listed pursuant to *Anders*, has disclosed no reasonably arguable appellate issues. Sorrow has been competently represented by counsel on this appeal.

IV.

DISPOSITION

The judgment is affirmed.

AARON, J.

WE CONCUR:

BENKE, Acting P. J.

IRION, J.