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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

STEVEN BRYANT,

Defendant and Appellant.

D062028

(Super. Ct. No. SCN281559)

APPEAL from a judgment of the Superior Court of San Diego County, Aaron H. Katz and Harry M. Elias, Judges. Affirmed.

Steven Bryant pled guilty to grand theft from a person (Pen. Code, § 487, subd. (c)) and, in return, all other counts and two prison prior allegations were dismissed.<sup>1</sup> The court (Judge Katz) imposed a three-year prison sentence but stayed execution of the sentence and granted Bryant formal probation, including 120 days in custody. A few months after being released from jail, Bryant admitted to violating the terms and

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

conditions of his probation and probation was revoked. The court (Judge Elias) vacated the stay on the three-year sentence. Pursuant to section 1170, subd. (h), the court ordered Bryant to serve his prison sentence in local custody.

#### FACTUAL AND PROCEDURAL BACKGROUND

On July 18, 2010, Bryant exited a grocery store with a four-pack of a sports drink and a bottle of liquor, but did not pay for the items. The store manager chased after him, and repeatedly asked him to return the items. When the store manager grabbed the back of Bryant's shirt, Bryant swung one of the bottles at the manager, who had to lean back to avoid being hit. Bryant fled on foot and was later arrested after being identified by a store employee who recognized him in a surveillance tape.<sup>2</sup>

On May 31, 2011, Bryant pled guilty to grand theft from a person in return for the dismissal of all other counts (including robbery) and two prison prior allegations. The plea bargain also included a "low lid" sentence and a *Cruz* waiver (*People v. Cruz* (1988) 44 Cal.3d 1247).<sup>3</sup> On the change of plea form, Bryant initialed the *Cruz* waiver which stated in relevant part that if he failed to appear for sentencing "the sentence portion of this agreement will be cancelled [and] I [Bryant] will be sentenced unconditionally, and I will not be allowed to withdraw my guilty . . . plea." Bryant failed to appear for sentencing on August 30, 2011, as ordered and a warrant issued. On September 20, 2011, Bryant appeared for sentencing. The court acknowledged Bryant's failure to appear for

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<sup>2</sup> The facts are based on information set forth in the probation officer's sentencing report.

<sup>3</sup> The low term for grand theft from a person is 16 months. (§§ 489, 18.)

sentencing, declined to accept the reason for his absence and ultimately imposed the three-year sentence.

After being released from custody, Bryant failed to report to his probation officer as required by the terms and conditions of his probation. At the request of the probation department, the court revoked Bryant's probation and set a probation revocation hearing. On April 19, 2012, Bryant admitted he was in violation of his probation. The court vacated the stay on the sentence and ordered execution of the three-year prison term.<sup>4</sup>

### DISCUSSION

Appointed appellate counsel has filed a brief setting forth the proceedings in the superior court. Counsel presents no argument for reversal, but asks that this court 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 as possible, but not arguable, issues: (1) whether appellant was properly advised of his rights at his probation revocation hearing; (2) whether the court erred in not reinstating probation following the admitted probation violation; and (3) whether appellant's trial counsel provided competent representation.

We granted Bryant permission to file a brief on his own behalf. He has not responded.

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<sup>4</sup> The superior court file reflects that Judge Elias later recalled the prison sentence pursuant to section 1170, subdivision (d), and in August 2012 gave Bryant credit for time served and reinstated probation on the same terms and conditions as imposed by Judge Katz. Because the court's order sending Bryant to prison in April may have implications for Bryant in the future, this appeal is not rendered moot by the court's subsequent recall of the prison sentence.

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 referred to by appellate counsel, has disclosed no reasonably arguable appellate issues. Competent counsel has represented Bryant on appeal.

DISPOSITION

The judgment is affirmed.

HALLER, J.

WE CONCUR:

McCONNELL, P. J.

HUFFMAN, J.