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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

ERICA LYNN DONNELL,

Defendant and Appellant.

D064377

(Super. Ct. Nos. SCD235326,
SCD245608)

APPEAL from a judgment of the Superior Court of San Diego County, Robert J.

Trentacosta, Judge. Affirmed.

Neil Auwarter, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

INTRODUCTION

In separate cases, Erica Lynn Donnell (aka Erica Lynn Bruce) pled guilty to one felony count of forcibly resisting a police officer (Pen. Code, § 69)¹ and one

¹ All further statutory references are to the Penal Code.

misdemeanor count of resisting a police officer (§ 148, subd. (a)(1)). After admitting she violated probation in both cases by failing to appear in court as required, the court imposed the two-year middle term to be served in local prison for the felony case (case No. SCD235326). Against the sentence, the court awarded Donnell 433 days of presentence custody credit consisting of 319 days actual custody credit and 114 days of conduct credit. The court subsequently modified the judgment to award a total of 550 days of presentence custody credit after adding 117 days of conduct credit. The court terminated probation in the misdemeanor case (case No. SCD245608) and released her from custody in that case alone based on time served.

Donnell appeals. Her appointed appellate counsel filed a brief requesting we independently review the record for error. (See *People v. Wende* (1979) 25 Cal.3d 436, 441-442.) Having done so and having identified no reasonably arguable appellate issues, we affirm the judgment.

BACKGROUND

A

Case No. SCD235326

According to the probation report, a San Diego Police officer encountered an apparently intoxicated Donnell in an alley on July 12, 2011. When he attempted to arrest her for an outstanding warrant, Donnell resisted by refusing to cooperate, hitting the officer and burning his arm with a cigarette lighter.

Donnell pleaded guilty to one felony count of knowingly resisting, by use of force and violence, an executive officer in the performance of his duty. (§ 69.) She was placed

on three years formal probation with 365 days in custody. However, after 180 days she was to be released to an approved treatment facility.

B

Case No. SCD245608

Donnell later pleaded guilty to one misdemeanor count of resisting a police officer while he was attempting to arrest her on January 10, 2013. (§148, subd. (a)(1).) In exchange, she was granted probation in case No. SCD245608, with terms including 365 days in custody and continued probation in case No. SCD235326. Probation was conditioned on her compliance with all terms and conditions of the Behavioral Health Court (BHC). As part of the application for acceptance into the BHC, Donnell agreed to follow all the rules and requirements of the program and to comply with the rules of the court, the probation officer, case manager and treatment team.

C

Probation Violation and Revocation

According to a supplemental probation report, after being accepted into BHC in April 2013, Donnell absconded and failed to appear at a scheduled BHC review hearing. Donnell waived her right to an evidentiary hearing and admitted she violated the terms and conditions of probation by failing to appear in court as ordered.

The court revoked probation in case No. SCD235326 and denied further probation noting there was no reasonable probability to believe she can or will comply because she had been tried and failed to complete two prior grants of probation. The court sentenced her to two years in local prison with custody credits of 319 days plus 114 days of conduct

credits for a total of 433 days. Subsequently, pursuant to a stipulation, the court found Donnell was entitled to receive an additional 117 days of conduct credits for total custody credit of 550 days.

The court terminated probation in case No. SCD245608. She was committed to local custody for 205 days, but was released from custody only on this case based on credit for time served of 103 actual days plus 102 days of conduct credit for a total of 205 days.

D

Appeal

Donnell appeals challenging the sentence or other matters occurring after the plea. Her appointed appellate counsel filed an opening brief raising a single issue seeking additional presentence conduct credits in case No. SCD235326. This issue was rendered moot when the trial court granted the additional conduct credits. On the motion of appointed appellate counsel, we struck the original opening brief and permitted counsel to file a brief under *People v. Wende, supra*, 25 Cal.3d 436.

DISCUSSION

Appointed appellate counsel has filed a brief summarizing the facts and proceedings below. Counsel presented no argument for reversal and instead requested we review the record for error as mandated by *People v. Wende, supra*, 25 Cal.3d at pages 441-442. Consistent with *Anders v. California* (1967) 386 U.S. 738, 744, counsel identified one possible but not reasonably arguable issue (*Anders* issue):

(1) "Was appellant correctly denied presentence conduct credits for her 88 days in a residential treatment program? (*People v. Palazuelos* (1996) 180 Cal.App.3d 962.)"

We granted Donnell permission to file a supplemental brief on her own behalf. She did not do so.

As requested by counsel, we reviewed the record for error and did not find any reasonably arguable appellate issues. Donnell has been competently represented by counsel on this appeal.

DISPOSITION

The judgment is affirmed.

McCONNELL, P. J.

WE CONCUR:

BENKE, J.

McINTYRE, J.