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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

DAVID RONALD STEVENS,

Defendant and Appellant.

D065034

(Super. Ct. No. SCD232817)

APPEAL from a judgment of the Superior Court of San Diego County, Peter C.

Deddeh, Judge. Affirmed.

Mark D. Johnson, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance by Plaintiff and Respondent.

David Ronald Stevens entered a guilty plea to one count of transportation of methamphetamine (Health & Saf. Code, § 11379, subd. (a)). He admitted three prior drug trafficking offenses (Health & Saf. Code, § 11370.2, subd. (c)), and five prison prior

convictions (Pen. Code, § 667.5, subd. (b)). The court struck all five prison priors and sentenced Stevens to a total determinate term of 12 years.

Stevens filed a timely notice of appeal.

Appellate counsel has filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*) and *Anders v. California* (1967) 386 U.S. 738 (*Anders*) indicating counsel has not discovered any reasonably arguable issues for reversal on appeal and asks this court to review the record for error.

We offered Stevens the opportunity to file his own brief on appeal and he has responded. We will discuss Stevens's issues below.

STATEMENT OF FACTS

On March 7, 2011, Stevens "transported [44.3 grams of] methamphetamine not for personal use with three priors for sales or transportation and five prison priors."

DISCUSSION

As we have indicated, appellate counsel has filed a brief pursuant to *Wende, supra*, 25 Cal.3d 436, requesting this court to review the record for error. Additionally, pursuant to *Anders, supra*, 386 U.S. 738, counsel has indentified one possible, but not reasonably arguable issue for our consideration.

First, however, we will deal with the letter brief filed by Stevens on his own behalf.

Stevens essentially challenges the trial court's exercise of discretion. He argues his sentence is cruel and unusual given what he describes as the inadequate conditions of the county jail in which he will serve his sentence. His arguments are based on his

current perception of the conditions in the jail but are not based on the matters raised in the trial court. As such they are not properly before this court on appeal. (*People v. Scott* (1994) 9 Cal.4th 331, 348-351.) To the extent Stevens believes his current confinement violates the Eighth Amendment, his remedy, if any, is by way of a petition for writ of habeas corpus.

We turn then to the *Anders, supra*, 386 U.S. 738 issue raised by appellate counsel. The issue raised is whether the trial court erred in failing to impose a split sentence as recommended by the probation officer. The probation officer's report recommended imposing a 17-year split sentence, with seven years to be served in custody and the remaining 10 years to be served in community supervision. The trial court, however, decided to strike all five prison priors and impose a 12-year term, none of it to be served under community supervision. This record does not raise a reasonably arguable issue for reversal on appeal.

We have reviewed the entire record pursuant to *Wende, supra*, 25 Cal.3d 436, and *Anders, supra*, 386 U.S. 738. Our review has not discovered any reasonably arguable issue for reversal on appeal. Competent counsel has represented Stevens on this appeal.

DISPOSITION

The judgment is affirmed.

HUFFMAN, J.

WE CONCUR:

BENKE, Acting P. J.

HALLER, J.